

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1855**

53rd Legislature  
1993 Regular Session

Passed by the House April 25, 1993  
Yeas 98 Nays 0

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Passed by the Senate April 24, 1993  
Yeas 40 Nays 3

\_\_\_\_\_  
**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1855** as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

---

**SUBSTITUTE HOUSE BILL 1855**

---

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1993 Regular Session

**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Zellinsky, Kessler and R. Meyers; by request of Insurance Commissioner)

Read first time 03/01/93.

1       AN ACT Relating to the financial supervision and solvency oversight  
2 of insurance companies; amending RCW 48.03.010, 48.03.040, 48.03.050,  
3 48.03.060, 48.05.340, 48.08.030, 48.11.140, 48.12.180, 48.12.190,  
4 48.12.200, 48.14.010, 48.31.030, 48.31.040, 48.31.110, 48.31.160,  
5 48.31.180, 48.31.190, 48.31.280, 48.31.300, 48.74.030, 48.74.040,  
6 48.74.050, 48.74.060, 48.92.010, 48.92.020, 48.92.030, 48.92.040,  
7 48.92.050, 48.92.070, 48.92.080, 48.92.090, 48.92.100, 48.92.120,  
8 48.92.130, and 48.92.140; adding new sections to chapter 48.03 RCW;  
9 adding new sections to chapter 48.01 RCW; adding new sections to  
10 chapter 48.31 RCW; adding new sections to chapter 48.74 RCW; adding a  
11 new section to chapter 48.92 RCW; adding new chapters to Title 48 RCW;  
12 recodifying RCW 48.31.110, 48.31.120, 48.31.130, 48.31.140, 48.31.150,  
13 48.31.160, 48.31.170, and 48.31.180; creating a new section; repealing  
14 RCW 48.07.090, 48.31A.005, 48.31A.010, 48.31A.020, 48.31A.030,  
15 48.31A.040, 48.31A.050, 48.31A.055, 48.31A.060, 48.31A.070, 48.31A.080,  
16 48.31A.090, 48.31A.100, 48.31A.110, 48.31A.120, 48.31A.130, and  
17 48.31A.900; and prescribing penalties.

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

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

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

6        (1) An "affiliate" of, or person "affiliated" with, a specific  
7    person, is a person who directly, or indirectly through one or more  
8    intermediaries, controls, or is controlled by, or is under common  
9    control with, the person specified.

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

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

29       (4) The term "insurer" has the same meaning as set forth in RCW  
30    48.01.050; it does not include agencies, authorities, or  
31    instrumentalities of the United States, its possessions and  
32    territories, the commonwealth of Puerto Rico, the District of Columbia,  
33    or a state or political subdivision of a state.

34       (5) A "person" is an individual, a corporation, a partnership, an  
35    association, a joint stock company, a trust, an unincorporated  
36    organization, a similar entity, or any combination of the foregoing  
37    acting in concert, but does not include a joint venture partnership

1 exclusively engaged in owning, managing, leasing, or developing real or  
2 tangible personal property.

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

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

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

12 NEW SECTION. **Sec. 3.** If an insurer ceases to control a  
13 subsidiary, it shall dispose of any investment in the subsidiary within  
14 three years from the time of the cessation of control or within such  
15 further time as the commissioner may prescribe, unless at any time  
16 after the investment has been made, the investment meets the  
17 requirements for investment under any other section of this Title, and  
18 the insurer has notified the commissioner thereof.

19 NEW SECTION. **Sec. 4.** (1) No person other than the issuer may make  
20 a tender offer for or a request or invitation for tenders of, or enter  
21 into an agreement to exchange securities of, seek to acquire, or  
22 acquire, in the open market or otherwise, voting security of a domestic  
23 insurer if, after the consummation thereof, the person would, directly  
24 or indirectly, or by conversion or by exercise of a right to acquire,  
25 be in control of the insurer. No person may enter into an agreement to  
26 merge with or otherwise to acquire control of a domestic insurer or  
27 person controlling a domestic insurer unless, at the time the offer,  
28 request, or invitation is made or the agreement is entered into, or  
29 before the acquisition of the securities if no offer or agreement is  
30 involved, the person has filed with the commissioner and has sent to  
31 the insurer, a statement containing the information required by this  
32 section and the offer, request, invitation, agreement, or acquisition  
33 has been approved by the commissioner as prescribed in this section.

34 For purposes of this section a domestic insurer includes a person  
35 controlling a domestic insurer unless the person, as determined by the  
36 commissioner, is either directly or through its affiliates primarily  
37 engaged in business other than the business of insurance. However, the

1 person shall file a preacquisition notification with the commissioner  
2 containing the information set forth in section 5(3)(a) of this act  
3 sixty days before the proposed effective date of the acquisition.  
4 Persons who fail to file the required preacquisition notification with  
5 the commissioner are subject to the penalties in section 5(5)(c) of  
6 this act. For the purposes of this section, "person" does not include  
7 a securities broker holding, in usual and customary broker's function,  
8 less than twenty percent of the voting securities of an insurance  
9 company or of a person who controls an insurance company.

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

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

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

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

31 (b) The source, nature, and amount of the consideration used or to  
32 be used in effecting the merger or other acquisition of control, a  
33 description of any transaction in which funds were or are to be  
34 obtained for any such purpose, including a pledge of the insurer's  
35 stock, or the stock of any of its subsidiaries or controlling  
36 affiliates, and the identity of persons furnishing the consideration.  
37 However, where a source of the consideration is a loan made in the  
38 lender's ordinary course of business, the identity of the lender must  
39 remain confidential if the person filing the statement so requests.

1 (c) Fully audited financial information as to the earnings and  
2 financial condition of each acquiring party for the preceding five  
3 fiscal years of each acquiring party, or for such lesser period as the  
4 acquiring party and any predecessors have been in existence, and  
5 similar unaudited information as of a date not earlier than ninety days  
6 before the filing of the statement.

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

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

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

20 (g) A full description of any contracts, arrangements, or  
21 understandings with respect to any security referred to in subsection  
22 (1) of this section in which an acquiring party is involved, including  
23 but not limited to transfer of any of the securities, joint ventures,  
24 loan or option arrangements, puts or calls, guarantees of loans,  
25 guarantees against loss or guarantees of profits, division of losses or  
26 profits, or the giving or withholding of proxies. The description must  
27 identify the persons with whom the contracts, arrangements, or  
28 understandings have been entered into.

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

34 (i) A description of any recommendations to purchase any security  
35 referred to in subsection (1) of this section made during the twelve  
36 calendar months before the filing of the statement, by an acquiring  
37 party, or by anyone based upon interviews or at the suggestion of the  
38 acquiring party.

1 (j) Copies of all tender offers for, requests or invitations for  
2 tenders of, exchange offers for, and agreements to acquire or exchange  
3 any securities referred to in subsection (1) of this section, and, if  
4 distributed, of additional soliciting material relating to the  
5 securities.

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

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

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

28 If a material change occurs in the facts set forth in the statement  
29 filed with the commissioner and sent to the insurer under this section,  
30 an amendment setting forth the change, together with copies of all  
31 documents and other material relevant to the change, must be filed with  
32 the commissioner and sent to the insurer within two business days after  
33 the person learns of the change.

34 (3) If an offer, request, invitation, agreement, or acquisition  
35 referred to in subsection (1) of this section is proposed to be made by  
36 means of a registration statement under the Securities Act of 1933 or  
37 in circumstances requiring the disclosure of similar information under  
38 the Securities Exchange Act of 1934, or under a state law requiring  
39 similar registration or disclosure, the person required to file the

1 statement referred to in subsection (1) of this section may use those  
2 documents in furnishing the information called for by that statement.

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

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

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

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

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

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

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

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

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

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

36 (b) The commissioner shall approve an exchange or other acquisition  
37 of control referred to in section 4 of this act within sixty days after  
38 he or she declares the statement filed under section 4 of this act to  
39 be complete and after holding a public hearing. At the hearing, the



1 person filing the statement, the insurer, and any person whose  
2 significant interest is determined by the commissioner to be affected  
3 may present evidence, examine and cross-examine witnesses, and offer  
4 oral and written arguments and in connection therewith may conduct  
5 discovery proceedings in the same manner as is allowed in the superior  
6 court of this state. All discovery proceedings must be concluded not  
7 later than three days before the commencement of the public hearing.

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

18 (5) This section does not apply to:

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

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

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

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

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

32 (7) The courts of this state have jurisdiction over every person  
33 not resident, domiciled, or authorized to do business in this state who  
34 files a statement with the commissioner under this section, and over  
35 all actions involving that person arising out of violations of this  
36 section, and each such person is deemed to have performed acts  
37 equivalent to and constituting an appointment by that person of the  
38 commissioner to be the person's true and lawful attorney upon whom may  
39 be served all lawful process in an action, suit, or proceeding arising

1 out of violations of this section. Copies of all such lawful process  
2 shall be served on the commissioner and transmitted by registered or  
3 certified mail by the commissioner to such person at the person's last  
4 known address.

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

7 (a) "Acquisition" means an agreement, arrangement, or activity, the  
8 consummation of which results in a person acquiring directly or  
9 indirectly the control of another person, and includes but is not  
10 limited to the acquisition of voting securities, the acquisition of  
11 assets, bulk reinsurance, and mergers.

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

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

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

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

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

31 (iii) The acquisition of a person by another person when neither  
32 person is directly nor through affiliates primarily engaged in the  
33 business of insurance, if preacquisition notification is filed with the  
34 commissioner in accordance with subsection (3)(a) of this section sixty  
35 days before the proposed effective date of the acquisition. However,  
36 preacquisition notification is not required for exclusion from this  
37 section if the acquisition would otherwise be excluded from this  
38 section by this subsection (2)(b);

- 1 (iv) The acquisition of already affiliated persons;
- 2 (v) An acquisition if, as an immediate result of the acquisition:
- 3 (A) In no market would the combined market share of the involved
- 4 insurers exceed five percent of the total market;
- 5 (B) There would be no increase in any market share; or
- 6 (C) In no market would:
- 7 (I) The combined market share of the involved insurers exceed
- 8 twelve percent of the total market; and
- 9 (II) The market share increase by more than two percent of the
- 10 total market.

11 For the purpose of (b)(v) of this subsection, a "market" means

12 direct written insurance premium in this state for a line of business

13 as contained in the annual statement required to be filed by insurers

14 licensed to do business in this state;

15 (vi) An acquisition for which a preacquisition notification would

16 be required under this section due solely to the resulting effect on

17 the ocean marine insurance line of business;

18 (vii) An acquisition of an insurer whose domiciliary commissioner

19 affirmatively finds: That the insurer is in failing condition; there

20 is a lack of feasible alternative to improving such condition; and the

21 public benefits of improving the insurer's condition through the

22 acquisition exceed the public benefits that would arise from not

23 lessening competition; and the findings are communicated by the

24 domiciliary commissioner to the commissioner of this state.

25 (3) An acquisition covered by subsection (2) of this section may be

26 subject to an order under subsection (5) of this section unless the

27 acquiring person files a preacquisition notification and the waiting

28 period has expired. The acquired person may file a preacquisition

29 notification.

30 (a) The preacquisition notification must be in such form and

31 contain such information as prescribed by the commissioner relating to

32 those markets that, under subsection (2)(b)(v) of this section, cause

33 the acquisition not to be exempted from this section. The commissioner

34 may require such additional material and information as he or she deems

35 necessary to determine whether the proposed acquisition, if

36 consummated, would violate the competitive standard of subsection (4)

37 of this section. The required information may include an opinion of an

38 economist as to the competitive impact of the acquisition in this state

1 accompanied by a summary of the education and experience of the person  
2 indicating his or her ability to render an informed opinion.

3 (b) The waiting period required begins on the date the commissioner  
4 declares the preacquisition notification to be complete and ends on the  
5 earlier of the sixtieth day after the date of the declaration or the  
6 termination of the waiting period by the commissioner. Before the end  
7 of the waiting period, the commissioner may require the submission of  
8 additional needed information relevant to the proposed acquisition. If  
9 additional information is required, the waiting period ends on the  
10 earlier of the sixtieth day after the commissioner declares he or she  
11 has received the additional information or the termination of the  
12 waiting period by the commissioner.

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

19 (b) In determining whether a proposed acquisition would violate the  
20 competitive standard of (a) of this subsection, the commissioner shall  
21 consider the following:

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

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

27	Insurer A	Insurer B
28	4%	4% or more
29	10%	2% or more
30	15%	1% or more; or

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

33	Insurer A	Insurer B
34	5%	5% or more
35	10%	4% or more
36	15%	3% or more
37	19%	1% or more

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

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

18 (A) There is a significant trend toward increased concentration in  
19 the market;

20 (B) One of the insurers involved is one of the insurers in a  
21 grouping of such large insurers showing the requisite increase in the  
22 market share; and

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

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

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

27 (B) The term "market" means the relevant product and geographical  
28 markets. In determining the relevant product and geographical markets,  
29 the commissioner shall give due consideration to, among other things,  
30 the definitions or guidelines, if any, adopted by the National  
31 Association of Insurance Commissioners and to information, if any,  
32 submitted by parties to the acquisition. In the absence of sufficient  
33 information to the contrary, the relevant product market is assumed to  
34 be the direct written insurance premium for a line of business, such  
35 line being that used in the annual statement required to be filed by  
36 insurers doing business in this state, and the relevant geographical  
37 market is assumed to be this state;

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

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

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

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

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

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

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

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

29 (ii) The commissioner may not enter the order unless: (A) There is  
30 a hearing; (B) notice of the hearing is issued before the end of the  
31 waiting period and not less than fifteen days before the hearing; and  
32 (C) the hearing is concluded and the order is issued no later than  
33 sixty days after the end of the waiting period. Every order must be  
34 accompanied by a written decision of the commissioner setting forth his  
35 or her findings of fact and conclusions of law.

36 (iii) An order entered under (a) of this subsection may not become  
37 final earlier than thirty days after it is issued, during which time  
38 the involved insurer may submit a plan to remedy the anticompetitive  
39 impact of the acquisition within a reasonable time. Based upon the

1 plan or other information, the commissioner shall specify the  
2 conditions, if any, under the time period during which the aspects of  
3 the acquisition causing a violation of the standards of this section  
4 would be remedied and the order vacated or modified.

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

7 (b) A person who violates a cease and desist order of the  
8 commissioner under (a) of this subsection and while the order is in  
9 effect, may, after notice and hearing and upon order of the  
10 commissioner, be subject at the discretion of the commissioner to one  
11 or more of the following:

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

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

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

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

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

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

28 (a) This section;

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

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

35 An insurer subject to registration under this section shall  
36 register within fifteen days after it becomes subject to registration,  
37 and annually thereafter by May 15th of each year for the previous  
38 calendar year, unless the commissioner for good cause shown extends the

1 time for registration, and then within the extended time. The  
2 commissioner may require an insurer authorized to do business in the  
3 state that is a member of a holding company system, but that is not  
4 subject to registration under this section, to furnish a copy of the  
5 registration statement, the summary specified in subsection (3) of this  
6 section, or other information filed by the insurance company with the  
7 insurance regulatory authority of its domiciliary jurisdiction.

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

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

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

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

18 (i) Loans, other investments, or purchases, sales, or exchanges of  
19 securities of the affiliates by the insurer or of the insurer by its affiliates;

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

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

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

26 (v) All management agreements, service contracts, and cost-sharing  
27 arrangements;

28 (vi) Reinsurance agreements;

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

30 (viii) Consolidated tax allocation agreements;

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

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

37 (3) Registration statements must contain a summary outlining all  
38 items in the current registration statement representing changes from  
39 the prior registration statement.



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

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

13 (b) If the commissioner determines that a registered insurer's  
14 surplus as regards policyholders is not reasonable in relation to the  
15 insurer's outstanding liabilities and adequate to its financial needs,  
16 the commissioner may order the registered insurance company to limit or  
17 discontinue the payment of stockholder dividends until such time as the  
18 surplus is adequate.

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

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

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

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

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

37 (11) A person may file with the commissioner a disclaimer of  
38 affiliation with an authorized insurer, or an insurer or a member of an  
39 insurance holding company system may file the disclaimer. The

1 disclaimer must fully disclose all material relationships and bases for  
2 affiliation between the person and the insurer as well as the basis for  
3 disclaiming the affiliation. After a disclaimer has been filed, the  
4 insurer is relieved of any duty to register or report under this  
5 section that may arise out of the insurer's relationship with the  
6 person unless and until the commissioner disallows the disclaimer. The  
7 commissioner shall disallow the a disclaimer only after furnishing all  
8 parties in interest with notice and opportunity to be heard and after  
9 making specific findings of fact to support the disallowance.

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

13 NEW SECTION. **Sec. 7.** (1)(a) Transactions within a holding company  
14 system to which an insurer subject to registration is a party are  
15 subject to the following standards:

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

17 (ii) Charges or fees for services performed must be fair and  
18 reasonable;

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

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

27 (v) The insurer's surplus regarding policyholders after dividends  
28 or distributions to shareholders or affiliates must be reasonable in  
29 relation to the insurer's outstanding liabilities and adequate to its  
30 financial needs.

31 (b) The following transactions involving a domestic insurer and a  
32 person in its holding company system may not be entered into unless the  
33 insurer has notified the commissioner in writing of its intention to  
34 enter into the transaction and the commissioner declares the notice to  
35 be sufficient at least sixty days before, or such shorter period as the  
36 commissioner may permit, and the commissioner has not disapproved it  
37 within that period:

1 (i) Sales, purchases, exchanges, loans or extensions of credit,  
2 guarantees, or investments if the transactions are equal to or exceed:  
3 (A) With respect to nonlife insurers, the lesser of three percent of  
4 the insurer's admitted assets or twenty-five percent of surplus as  
5 regards policyholders; (B) with respect to life insurers, three percent  
6 of the insurer's admitted assets; each as of the 31st day of the  
7 previous December;

8 (ii) Loans or extensions of credit to any person who is not an  
9 affiliate, where the insurer makes the loans or extensions of credit  
10 with the agreement or understanding that the proceeds of the  
11 transactions, in whole or in substantial part, are to be used to make  
12 loans or extensions of credit to, to purchase assets of, or to make  
13 investments in, an affiliate of the insurer making the loans or  
14 extensions of credit if the transactions are equal to or exceed: (A)  
15 With respect to nonlife insurers, the lesser of three percent of the  
16 insurer's admitted assets or twenty-five percent of surplus as regards  
17 policyholders; (B) with respect to life insurers, three percent of the  
18 insurer's admitted assets; each as of the 31st day of the previous  
19 December;

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

28 (iv) Management agreements, service contracts, and cost-sharing  
29 arrangements; and

30 (v) Material transactions, specified by rule, that the commissioner  
31 determines may adversely affect the interests of the insurer's  
32 policyholders.

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

36 (c) A domestic insurer may not enter into transactions that are  
37 part of a plan or series of like transactions with persons within the  
38 holding company system if the purpose of those separate transactions is  
39 to avoid the statutory threshold amount and thus avoid the review that

1 would occur otherwise. If the commissioner determines that the  
2 separate transactions were entered into over a twelve-month period for  
3 that purpose, the commissioner may apply for an order as described in  
4 section 10(1) of this act.

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

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

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

19 (b) For purposes of this section, an extraordinary dividend or  
20 distribution is a dividend or distribution of cash or other property  
21 whose fair market value, together with that of other dividends or  
22 distributions made within the period of twelve consecutive months  
23 ending on the date on which the proposed dividend is scheduled for  
24 payment or distribution, exceeds the greater of: (i) Ten percent of  
25 the company's surplus as regards policyholders as of the 31st day of  
26 the previous December; or (ii) the net gain from operations of the  
27 company if the company is a life insurance company, or the net income  
28 if the company is not a life insurance company, for the twelve month  
29 period ending the 31st day of the previous December, but does not  
30 include pro rata distributions of any class of the company's own  
31 securities.

32 (c) Notwithstanding any other provision of law, an insurer may  
33 declare an extraordinary dividend or distribution that is conditional  
34 upon the commissioner's approval. The declaration confers no rights  
35 upon shareholders until: (i) The commissioner has approved the payment  
36 of the dividend or distribution; or (ii) the commissioner has not  
37 disapproved the payment within the thirty-day period referred to in (a)  
38 of this subsection.

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

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

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

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

11 (d) The extent of the geographical dispersion of the insurer's  
12 insured risks;

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

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

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

18 (h) The surplus as regards policyholders maintained by other  
19 comparable insurers;

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

21 (j) The quality and liquidity of investments in affiliates. The  
22 commissioner may discount any such investment or may treat any such  
23 investment as a disallowed asset for purposes of determining the  
24 adequacy of surplus as regards policyholders whenever in his or her  
25 judgment the investment so warrants; and

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

28 NEW SECTION. **Sec. 8.** (1) Subject to the limitation contained in  
29 this section and in addition to the powers that the commissioner has  
30 under chapter 48.03 RCW relating to the examination of insurers, the  
31 commissioner also may order an insurer registered under section 6 of  
32 this act to produce such records, books, or other information papers in  
33 the possession of the insurer or its affiliates as are reasonably  
34 necessary to ascertain the financial condition of the insurer or to  
35 determine compliance with this title. If the insurer fails to comply  
36 with the order, the commissioner may examine the affiliates to obtain  
37 the information.

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

7 (3) Each registered insurer producing for examination records,  
8 books, and papers under subsection (1) of this section are liable for  
9 and shall pay the expense of the examination in accordance with RCW  
10 48.03.060.

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

14 NEW SECTION. **Sec. 10.** (1) Whenever it appears to the commissioner  
15 that an insurer or a director, officer, employee, or agent of the  
16 insurer has committed or is about to commit a violation of this chapter  
17 or any rule or order of the commissioner under this chapter, the  
18 commissioner may apply to the superior court for Thurston county or to  
19 the court for the county in which the principal office of the insurer  
20 is located for an order enjoining the insurer or the director, officer,  
21 employee, or agent from violating or continuing to violate this chapter  
22 or any such rule or order, and for such other equitable relief as the  
23 nature of the case and the interest of the insurer's policyholders,  
24 creditors, and shareholders or the public may require.

25 (2) No security that is the subject of an agreement or arrangement  
26 regarding acquisition, or that is acquired or to be acquired, in  
27 contravention of this chapter or of a rule or order of the commissioner  
28 under this chapter may be voted at a shareholders' meeting, or may be  
29 counted for quorum purposes. Any action of shareholders requiring the  
30 affirmative vote of a percentage of shares may be taken as though the  
31 securities were not issued and outstanding, but no action taken at any  
32 such meeting may be invalidated by the voting of the securities, unless  
33 the action would materially affect control of the insurer or unless the  
34 courts of this state have so ordered. If an insurer or the  
35 commissioner has reason to believe that a security of the insurer has  
36 been or is about to be acquired in contravention of this chapter or of  
37 a rule or order of the commissioner under this chapter, the insurer or

1 the commissioner may apply to the superior court for Thurston county or  
2 to the court for the county in which the insurer has its principal  
3 place of business to enjoin an offer, request, invitation, agreement,  
4 or acquisition made in contravention of section 4 of this act or a rule  
5 or order of the commissioner under that section to enjoin the voting of  
6 a security so acquired, to void a vote of the security already cast at  
7 a meeting of shareholders, and for such other relief as the nature of  
8 the case and the interest of the insurer's policyholders, creditors,  
9 and shareholders or the public may require.

10 (3) If a person has acquired or is proposing to acquire voting  
11 securities in violation of this chapter or a rule or order of the  
12 commissioner under this chapter, the superior court for Thurston county  
13 or the court for the county in which the insurer has its principal  
14 place of business may, on such notice as the court deems appropriate,  
15 upon the application of the insurer or the commissioner seize or  
16 sequester voting securities of the insurer owned directly or indirectly  
17 by the person, and issue such order with respect to the securities as  
18 may be appropriate to carry out this chapter.

19 Notwithstanding any other provisions of law, for the purposes of  
20 this chapter, the situs of the ownership of the securities of domestic  
21 insurers is in this state.

22 NEW SECTION. **Sec. 11.** (1) The commissioner shall require, after  
23 notice and hearing, an insurer failing, without just cause, to file a  
24 registration statement as required in this chapter, to pay a penalty of  
25 not more than ten thousand dollars per day. The maximum penalty under  
26 this section is one million dollars. The commissioner may reduce the  
27 penalty if the insurer demonstrates to the commissioner that the  
28 imposition of the penalty would constitute a financial hardship to the  
29 insurer. The commissioner shall pay a fine collected under this  
30 section to the state treasurer for the account of the general fund.

31 (2) Every director or officer of an insurance holding company  
32 system who knowingly violates this chapter, or participates in, or  
33 assents to, or who knowingly permits an officer or agent of the insurer  
34 to engage in transactions or make investments that have not been  
35 properly reported or submitted under section 6(1) or 7(1)(b) or (2) of  
36 this act, or that violate this chapter, shall pay, in their individual  
37 capacity, a civil forfeiture of not more than ten thousand dollars per  
38 violation, after notice and hearing before the commissioner. In

1 determining the amount of the civil forfeiture, the commissioner shall  
2 take into account the appropriateness of the forfeiture with respect to  
3 the gravity of the violation, the history of previous violations, and  
4 such other matters as justice may require.

5 (3) Whenever it appears to the commissioner that an insurer subject  
6 to this chapter or a director, officer, employee, or agent of the  
7 insurer has engaged in a transaction or entered into a contract that is  
8 subject to section 7 of this act and that would not have been approved  
9 had approval been requested, the commissioner may order the insurer to  
10 cease and desist immediately any further activity under that  
11 transaction or contract. After notice and hearing the commissioner may  
12 also order the insurer to void any such contracts and restore the  
13 status quo if that action is in the best interest of the policyholders,  
14 creditors, or the public.

15 (4) Whenever it appears to the commissioner that an insurer or a  
16 director, officer, employee, or agent of the insurer has committed a  
17 willful violation of this chapter, the commissioner may refer the  
18 matter to the prosecuting attorney of Thurston county or the county in  
19 which the principal office of the insurer is located. An insurer that  
20 willfully violates this chapter may be fined not more than one million  
21 dollars. Any individual who willfully violates this chapter may be  
22 fined in his or her individual capacity not more than ten thousand  
23 dollars, or be imprisoned for not more than three years, or both.

24 (5) An officer, director, or employee of an insurance holding  
25 company system who willfully and knowingly subscribes to or makes or  
26 causes to be made a false statement or false report or false filing  
27 with the intent to deceive the commissioner in the performance of his  
28 or her duties under this chapter, upon conviction thereof, shall be  
29 imprisoned for not more than three years or fined not more than ten  
30 thousand dollars or both. The officer, director, or employee upon whom  
31 the fine is imposed shall pay the fine in his or her individual  
32 capacity.

33 NEW SECTION. **Sec. 12.** Whenever it appears to the commissioner  
34 that a person has committed a violation of this chapter that so impairs  
35 the financial condition of a domestic insurer as to threaten insolvency  
36 or make the further transaction of business by it hazardous to its  
37 policyholders, creditors, shareholders, or the public, the commissioner  
38 may proceed as provided in RCW 48.31.030 and 48.31.040 to take



1 possession of the property of the domestic insurer and to conduct the  
2 business of the insurer.

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

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

22 (3) A person who was a parent corporation or holding company or a  
23 person who otherwise controlled the insurer or affiliate when the  
24 distributions were paid is liable up to the amount of distributions or  
25 payments under subsection (1) of this section the person received. A  
26 person who controlled the insurer at the time the distributions were  
27 declared is liable up to the amount of distributions he or she would  
28 have received if they had been paid immediately. If two or more  
29 persons are liable with respect to the same distributions, they are  
30 jointly and severally liable.

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

35 (5) To the extent that a person liable under subsection (3) of this  
36 section is insolvent or otherwise fails to pay claims due from it under  
37 those provisions, its parent corporation or holding company or person  
38 who otherwise controlled it at the time the distribution was paid, is

1 jointly and severally liable for a resulting deficiency in the amount  
2 recovered from the parent corporation or holding company or person who  
3 otherwise controlled it.

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

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

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

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

23 NEW SECTION. **Sec. 17.** Unless the context clearly requires  
24 otherwise, the definitions in this section apply throughout this  
25 chapter.

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

30 (2) "Broker" means an insurance broker or brokers or any other  
31 person, firm, association, or corporation, when, for compensation,  
32 commission, or other thing of value, the person, firm, association, or  
33 corporation acts or aids in any manner in soliciting, negotiating, or  
34 procuring the making of an insurance contract on behalf of an insured  
35 other than the person, firm, association, or corporation.

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

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

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

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

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

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

16 (c) Captive insurers. For the purposes of this chapter, captive  
17 insurers are insurance companies owned by another organization, whose  
18 exclusive purpose is to insure risks of the parent organization and  
19 affiliated companies or, in the case of groups and associations,  
20 insurance organizations owned by the insureds whose exclusive purpose  
21 is to insure risks to member organizations or group members, or both,  
22 and their affiliates.

23 NEW SECTION. **Sec. 18.** This chapter applies to licensed insurers  
24 either domiciled in this state or domiciled in a state that is not an  
25 accredited state having in effect a substantially similar law. All  
26 provisions of the Insurer Holding Company Act, chapter 48.-- RCW  
27 (sections 1 through 15 of this act), or its successor act, to the  
28 extent they are not superseded by this chapter, continue to apply to  
29 all parties within the holding company systems subject to this chapter.

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

1 (b) Notwithstanding (a) of this subsection, this section does not  
2 apply if:

3 (i) The controlling producer:

4 (A) Places insurance only with the controlled insurer; or only with  
5 the controlled insurer and a member or members of the controlled  
6 insurer's holding company system, or the controlled insurer's parent,  
7 affiliate, or subsidiary and receives no compensation based upon the  
8 amount of premiums written in connection with the insurance; and

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

11 (ii) The controlled insurer, except for business written through a  
12 residual market facility such as the assigned risk plan, fair plans, or  
13 other such plans, accepts insurance business only from a controlling  
14 broker, a broker controlled by the controlled insurer, or a broker that  
15 is a subsidiary of the controlled insurer.

16 (2) A controlled insurer may not accept business from a controlling  
17 broker and a controlling broker may not place business with a  
18 controlled insurer unless there is a written contract between the  
19 controlling broker and the insurer specifying the responsibilities of  
20 each party, which contract has been approved by the board of directors  
21 of the insurer and contains the following minimum provisions:

22 (a) The controlled insurer may terminate the contract for cause,  
23 upon written notice to the controlling broker. The controlled insurer  
24 shall suspend the authority of the controlling broker to write business  
25 during the pendency of a dispute regarding the cause for the  
26 termination;

27 (b) The controlling broker shall render accounts to the controlling  
28 insurer detailing all material transactions, including information  
29 necessary to support all commissions, charges, and other fees received  
30 by, or owing to, the controlling broker;

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

37 (d) The controlling broker shall hold all funds collected for the  
38 controlled insurer's account in a fiduciary capacity, in one or more  
39 appropriately identified bank accounts in banks that are members of the

1 federal reserve system, in accordance with the applicable provisions of  
2 this title. However, funds of a controlling broker not required to be  
3 licensed in this state must be maintained in compliance with the  
4 requirements of the controlling broker's domiciliary jurisdiction;

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

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

9 (g) The controlled insurer shall provide the controlling broker  
10 with its underwriting standards, rules, and procedures, manuals setting  
11 forth the rates to be charged, and the conditions for the acceptance or  
12 rejection of risks. The controlling broker shall adhere to the  
13 standards, rules, procedures, rates, and conditions that are the same  
14 as those applicable to comparable business placed with the controlled  
15 insurer by a broker other than the controlling broker;

16 (h) The rates of the controlling broker's commissions, charges, and  
17 other fees must be no greater than those applicable to comparable  
18 business placed with the controlled insurer by brokers other than  
19 controlling brokers. For purposes of (g) and (h) of this subsection,  
20 examples of comparable business include the same lines of insurance,  
21 same kinds of insurance, same kinds of risks, similar policy limits,  
22 and similar quality of business;

23 (i) If the contract provides that the controlling broker, on  
24 insurance business placed with the insurer, is to be compensated  
25 contingent upon the insurer's profits on that business, then the  
26 compensation shall not be determined and paid until at least five years  
27 after the premiums on liability insurance are earned and at least one  
28 year after the premiums are earned on any other insurance. In no event  
29 may the commissions be paid until the adequacy of the controlled  
30 insurer's reserves on remaining claims has been independently verified  
31 under subsection (3) of this section;

32 (j) The insurer may establish a different limit on the controlling  
33 broker's writings in relation to the controlled insurer's surplus and  
34 total writings for each line or subline of business. The controlled  
35 insurer shall notify the controlling broker when the applicable limit  
36 is approached and may not accept business from the controlling broker  
37 if the limit is reached. The controlling broker may not place business  
38 with the controlled insurer if it has been notified by the controlled  
39 insurer that the limit has been reached; and

1 (k) The controlling broker may negotiate but may not bind  
2 reinsurance on behalf of the controlled insurer on business the  
3 controlling broker places with the controlled insurer, except that the  
4 controlling broker may bind facultative reinsurance contracts under  
5 obligatory facultative agreements if the contract with the controlled  
6 insurer contains underwriting guidelines including, for both  
7 reinsurance assumed and ceded, a list of reinsurers with which the  
8 automatic agreements are in effect, the coverages and amounts of  
9 percentages that may be reinsured, and commission schedules.

10 (3) Every controlled insurer shall have an audit committee of the  
11 board of directors composed of independent directors. The audit  
12 committee shall annually meet with management, the insurer's  
13 independent certified public accountants, and an independent casualty  
14 actuary or other independent loss reserve specialist acceptable to the  
15 commissioner to review the adequacy of the insurer's loss reserves.

16 (4)(a) In addition to any other required loss reserve  
17 certification, the controlled insurer shall, annually, on April 1st of  
18 each year, file with the commissioner an opinion of an independent  
19 casualty actuary, or such other independent loss reserve specialist  
20 acceptable to the commissioner, reporting loss ratios for each line of  
21 business written and attesting to the adequacy of loss reserves  
22 established for losses incurred and outstanding as of year-end,  
23 including losses incurred but not reported, on business placed by the  
24 broker; and

25 (b) The controlled insurer shall annually report to the  
26 commissioner the amount of commissions paid to the producer, the  
27 percentage that amount represents of the net premiums written, and  
28 comparable amounts and percentages paid to noncontrolling brokers for  
29 placements of the same kinds of insurance.

30 NEW SECTION. **Sec. 20.** The broker, before the effective date of  
31 the policy, shall deliver written notice to the prospective insured  
32 disclosing the relationship between the broker and the controlled  
33 insurer, except that, if the business is placed through a subbroker who  
34 is not a controlling broker, the controlling broker shall retain in his  
35 or her records a signed commitment from the subbroker that the  
36 subbroker is aware of the relationship between the insurer and the  
37 broker and that the subbroker has notified or will notify the insured.

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

6        (b) If it is found that because of material noncompliance that the  
7 controlled insurer or any policyholder thereof has suffered loss or  
8 damage, the commissioner may maintain a civil action or intervene in an  
9 action brought by or on behalf of the insurer or policyholder for  
10 recovery of compensatory damages for the benefit of the insurer or  
11 policyholder or other appropriate relief.

12        (2) If an order for liquidation or rehabilitation of the controlled  
13 insurer has been entered under chapter 48.31 RCW, and the receiver  
14 appointed under that order believes that the controlling broker or any  
15 other person has not materially complied with this chapter, or a rule  
16 adopted or order issued under this chapter, and the insurer suffered  
17 any loss or damage from the noncompliance, the receiver may maintain a  
18 civil action for recovery of damages or other appropriate sanctions for  
19 the benefit of the insurer.

20        (3) Nothing contained in this section alters or affects the right  
21 of the commissioner to impose other penalties provided for in this  
22 title.

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

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

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

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

31        (2) "Controlling person" means a person, firm, association, or  
32 corporation who directly or indirectly has the power to direct or cause  
33 to be directed, the management, control, or activities of the  
34 reinsurance intermediary.

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

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

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

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

9 (7) "Reinsurance intermediary-manager" means a person, firm,  
10 association, or corporation who has authority to bind or manages all or  
11 part of the assumed reinsurance business of a reinsurer, including the  
12 management of a separate division, department, or underwriting office,  
13 and acts as an agent for the reinsurer whether known as a reinsurance  
14 intermediary-manager, manager, or other similar term. Notwithstanding  
15 this subsection, the following persons are not considered a reinsurance  
16 intermediary-manager, with respect to such reinsurer, for the purposes  
17 of this chapter:

18 (a) An employee of the reinsurer;

19 (b) A United States manager of the United States branch of an alien  
20 reinsurer;

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

26 (d) The manager of a group, association, pool, or organization of  
27 insurers that engages in joint underwriting or joint reinsurance and  
28 that are subject to examination by the insurance commissioner of the  
29 state in which the manager's principal business office is located.

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

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

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



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

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

7 (c) Has been determined by either the commissioner, or the  
8 securities valuation office of the National Association of Insurance  
9 Commissioners, to meet such standards of financial condition and  
10 standing as are considered necessary and appropriate to regulate the  
11 quality of financial institutions whose letters of credit will be  
12 acceptable to the commissioner.

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

18 (a) In this state, unless the person, firm, association, or  
19 corporation is a licensed reinsurance intermediary-broker in this  
20 state; or

21 (b) In another state, unless the person, firm, association, or  
22 corporation is a licensed reinsurance intermediary-broker in this state  
23 or another state having a regulatory scheme substantially similar to  
24 this chapter.

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

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

30 (b) In this state, if the person, firm, association, or corporation  
31 maintains an office either directly or as a member or employee of a  
32 firm or association, or an officer, director, or employee of a  
33 corporation in this state, unless the person, firm, association, or  
34 corporation is a licensed reinsurance intermediary-manager in this  
35 state;

36 (c) In another state for a nondomestic reinsurer, unless the  
37 person, firm, association, or corporation is a licensed reinsurance

1 intermediary-manager in this state or another state having a  
2 substantially similar regulatory scheme.

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

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

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

9 (4)(a) The commissioner may issue a reinsurance intermediary  
10 license to a person, firm, association, or corporation who has complied  
11 with the requirements of this chapter. Any such license issued to a  
12 firm or association authorizes all the members of the firm or  
13 association and any designated employees to act as reinsurance  
14 intermediaries under the license, and all such persons may be named in  
15 the application and any supplements to it. Any such license issued to  
16 a corporation authorizes all of the officers, and any designated  
17 employees and directors of it, to act as reinsurance intermediaries on  
18 behalf of the corporation, and all such persons must be named in the  
19 application and any supplements to it.

20 (b) If the applicant for a reinsurance intermediary license is a  
21 nonresident, the applicant, as a condition precedent to receiving or  
22 holding a license, shall designate the commissioner as agent for  
23 service of process in the manner, and with the same legal effect,  
24 provided for by this title for designation of service of process upon  
25 unauthorized insurers, and also shall furnish the commissioner with the  
26 name and address of a resident of this state upon whom notices or  
27 orders of the commissioner or process affecting the nonresident  
28 reinsurance intermediary may be served. The licensee shall promptly  
29 notify the commissioner in writing of every change in its designated  
30 agent for service of process, but the change does not become effective  
31 until acknowledged by the commissioner.

32 (5) The commissioner may refuse to issue a reinsurance intermediary  
33 license if, in his or her judgment, the applicant, anyone named on the  
34 application, or a member, principal, officer, or director of the  
35 applicant, is not trustworthy, or that a controlling person of the  
36 applicant is not trustworthy to act as a reinsurance intermediary, or  
37 that any of the foregoing has given cause for revocation or suspension  
38 of the license, or has failed to comply with a prerequisite for the  
39 issuance of such license. Upon written request, the commissioner will

1 furnish a summary of the basis for refusal to issue a license, which  
2 document is privileged and not subject to chapter 42.17 RCW.

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

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 26.** (1) For at least ten years after expiration  
30 of each contract of reinsurance transacted by the reinsurance  
31 intermediary-broker, the reinsurance intermediary-broker shall keep a  
32 complete record for each transaction showing:

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

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

37 (c) Reporting and settlement requirements of balances;

- 1 (d) Rate used to compute the reinsurance premium;
- 2 (e) Names and addresses of assuming reinsurers;
- 3 (f) Rates of all reinsurance commissions, including the commissions
- 4 on any retrocessions handled by the reinsurance intermediary-broker;
- 5 (g) Related correspondence and memoranda;
- 6 (h) Proof of placement;
- 7 (i) Details regarding retrocessions handled by the reinsurance
- 8 intermediary-broker including the identity of retrocessionaires and
- 9 percentage of each contract assumed or ceded;
- 10 (j) Financial records, including but not limited to, premium and
- 11 loss accounts; and
- 12 (k) When the reinsurance intermediary-broker procures a reinsurance
- 13 contract on behalf of a licensed ceding insurer:
- 14 (i) Directly from any assuming reinsurer, written evidence that the
- 15 assuming reinsurer has agreed to assume the risk; or
- 16 (ii) If placed through a representative of the assuming reinsurer,
- 17 other than an employee, written evidence that the reinsurer has
- 18 delegated binding authority to the representative.
- 19 (2) The insurer has access and the right to copy and audit all
- 20 accounts and records maintained by the reinsurance intermediary-broker
- 21 related to its business in a form usable by the insurer.

22 NEW SECTION. **Sec. 27.** (1) An insurer may not engage the services

23 of a person, firm, association, or corporation to act as a reinsurance

24 intermediary-broker on its behalf unless the person is licensed as

25 required by section 24(1) of this act.

26 (2) An insurer may not employ an individual who is employed by a

27 reinsurance intermediary-broker with which it transacts business,

28 unless the reinsurance intermediary-broker is under common control with

29 the insurer and subject to the Insurer Holding Company Act, chapter

30 48.-- RCW (sections 1 through 15 of this act).

31 (3) The insurer shall annually obtain a copy of statements of the

32 financial condition of each reinsurance intermediary-broker with which

33 it transacts business.

34 NEW SECTION. **Sec. 28.** Transactions between a reinsurance

35 intermediary manager and the reinsurer it represents in such capacity

36 may be entered into only under a written contract, specifying the

37 responsibilities of each party, which shall be approved by the

1 reinsurer's board of directors. At least thirty days before the  
2 reinsurer assumes or cedes business through the reinsurance  
3 intermediary-manager, a true copy of the approved contract must be  
4 filed with the commissioner for approval. The contract must, at a  
5 minimum, provide that:

6 (1) The reinsurer may terminate the contract for cause upon written  
7 notice to the reinsurance intermediary-manager. The reinsurer may  
8 immediately suspend the authority of the reinsurance intermediary-  
9 manager to assume or cede business during the pendency of a dispute  
10 regarding the cause for termination.

11 (2) The reinsurance intermediary-manager shall render accounts to  
12 the reinsurer accurately detailing all material transactions, including  
13 information necessary to support all commissions, charges, and other  
14 fees received by, or owing to, the reinsurance intermediary-manager,  
15 and remit all funds due under the contract to the reinsurer on not less  
16 than a monthly basis.

17 (3) All funds collected for the reinsurer's account must be held by  
18 the reinsurance intermediary-manager in a fiduciary capacity in a bank  
19 that is a qualified United States financial institution. The  
20 reinsurance intermediary-manager may retain no more than three months'  
21 estimated claims payments and allocated loss adjustment expenses. The  
22 reinsurance intermediary-manager shall maintain a separate bank account  
23 for each reinsurer that it represents.

24 (4) For at least ten years after expiration of each contract of  
25 reinsurance transacted by the reinsurance intermediary-manager, the  
26 reinsurance intermediary-manager shall keep a complete record for each  
27 transaction showing:

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

30 (b) Period of coverage, including effective and expiration dates,  
31 cancellation provisions, and notice required of cancellation, and  
32 disposition of outstanding reserves on covered risks;

33 (c) Reporting and settlement requirements of balances;

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

35 (e) Names and addresses of reinsurers;

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

38 (g) Related correspondence and memoranda;

39 (h) Proof of placement;

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

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

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

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

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

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

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

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

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

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

27 (a) All claims will be reported to the reinsurer in a timely  
28 manner;

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

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

33 (ii) Involves a coverage dispute;

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

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

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

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

6 (d) Settlement authority granted to the reinsurance intermediary-  
7 manager may be terminated for cause upon the reinsurer's written notice  
8 to the reinsurance intermediary-manager or upon the termination of the  
9 contract. The reinsurer may suspend the settlement authority during  
10 the pendency of a dispute regarding the cause of termination.

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

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

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

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

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

31 NEW SECTION. **Sec. 29.** The reinsurance intermediary-manager may  
32 not:

33 (1) Cede retrocessions on behalf of the reinsurer, except that the  
34 reinsurance intermediary-manager may cede facultative retrocessions  
35 under obligatory automatic agreements if the contract with the  
36 reinsurer contains reinsurance underwriting guidelines for the  
37 retrocessions. The guidelines must include a list of reinsurers with  
38 which the automatic agreements are in effect, and for each such

1 reinsurer, the coverages and amounts or percentages that may be  
2 reinsured, and commission schedules.

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

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

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

12 (5) Collect a payment from a retrocessionaire or commit the  
13 reinsurer to a claim settlement with a retrocessionaire, without prior  
14 approval of the reinsurer. If prior approval is given, a report must  
15 be promptly forwarded to the reinsurer.

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

20 (7) Appoint a subreinsurance intermediary-manager.

21 NEW SECTION. **Sec. 30.** (1) A reinsurer may not engage the services  
22 of a person, firm, association, or corporation to act as a reinsurance  
23 intermediary-manager on its behalf unless the person is licensed as  
24 required by section 24(2) of this act.

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

29 (3) If a reinsurance intermediary-manager establishes loss  
30 reserves, the reinsurer shall annually obtain the opinion of an actuary  
31 attesting to the adequacy of loss reserves established for losses  
32 incurred and outstanding on business produced by the reinsurance  
33 intermediary-manager. This opinion is in addition to any other  
34 required loss reserve certification.

35 (4) Binding authority for all retrocessional contracts or  
36 participation in reinsurance syndicates must rest with an officer of  
37 the reinsurer who is not affiliated with the reinsurance intermediary-  
38 manager.



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

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

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

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

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

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

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

24 (c) If a violation was committed by the reinsurance intermediary,  
25 make restitution to the insurer, reinsurer, rehabilitator, or  
26 liquidator of the insurer or reinsurer for the net losses incurred by  
27 the insurer or reinsurer attributable to the violation.

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

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

33 (4) Nothing contained in this chapter is intended to or in any  
34 manner limits or restricts the rights of policyholders, claimants,  
35 creditors, or other third parties or confer any rights to those  
36 persons.

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

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

5        NEW SECTION.    **Sec. 35.** Unless the context clearly requires  
6 otherwise, the definitions in this section apply throughout this  
7 chapter.

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

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

12       (3) "Managing general agent" means:

13       (a) A person who manages all or part of the insurance business of  
14 an insurer, including the management of a separate division,  
15 department, or underwriting office, and acts as a representative of the  
16 insurer whether known as a managing general agent, manager, or other  
17 similar term, and who, with or without the authority, either separately  
18 or together with affiliates, produces, directly or indirectly, and  
19 underwrites an amount of gross direct written premium equal to or more  
20 than five percent of the policyholder surplus as reported in the last  
21 annual statement of the insurer in any one quarter or year together  
22 with one or more of the following activities related to the business produced:

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

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

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

28       (i) An employee of the insurer;

29       (ii) A United States manager of the United States branch of an  
30 alien insurer;

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

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

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

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

12 (2) No person may act in the capacity of a managing general agent  
13 representing an insurer domiciled in this state with respect to risks  
14 located outside this state unless that person is licensed as an agent  
15 in this state, under chapter 48.17 RCW, for the lines of insurance  
16 involved and is designated as a managing general agent and appointed as  
17 such by the insurer.

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

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

22 NEW SECTION. **Sec. 37.** No managing general agent may place  
23 business with an insurer unless there is in force a written contract  
24 between the managing general agent and the insurer that sets forth the  
25 responsibilities of each party and, where both parties share  
26 responsibility for a particular function, specifies the division of the  
27 responsibilities, and that contains the following minimum provisions:

28 (1) The insurer may terminate the contract for cause upon written  
29 notice to the managing general agent. The insurer may suspend the  
30 underwriting authority of the managing general agent during the  
31 pendency of a dispute regarding the cause for termination.

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

35 (3) The managing general agent shall hold funds collected for the  
36 account of an insurer in a fiduciary capacity in a financial  
37 institution located in this state that is a member of the federal

1 reserve system. This account must be used for all payments on behalf  
2 of the insurer. The managing general agent may retain no more than  
3 three months' estimated claims payments and allocated loss adjustment  
4 expenses.

5 (4) The managing general agent shall maintain separate records of  
6 business written for each insurer. The insurer has access to and the  
7 right to copy all accounts and records related to its business in a  
8 form usable by the insurer, and the commissioner has access to all  
9 books, bank accounts, and records of the managing general agent in a  
10 form usable to the commissioner. Those records shall be retained  
11 according to the requirements of this title and rules adopted under it.

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

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

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

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

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

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

27 (i) Has the potential to exceed an amount determined by the  
28 commissioner, or exceeds the limit set by the insurer, whichever is  
29 less;

30 (ii) Involves a coverage dispute;

31 (iii) May exceed the managing general agent's claims settlement  
32 authority;

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

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

36 (c) All claim files are the joint property of the insurer and the  
37 managing general agent. However, upon an order of liquidation of the  
38 insurer, those files become the sole property of the insurer or its

1 liquidator or successor. The managing general agent has reasonable  
2 access to and the right to copy the files on a timely basis.

3 (d) Settlement authority granted to the managing general agent may  
4 be terminated for cause upon the insurer's written notice to the  
5 managing general agent or upon the termination of the contract. The  
6 insurer may suspend the managing general agent's settlement authority  
7 during the pendency of a dispute regarding the cause for termination.

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

10 (9) If the contract provides for a sharing of interim profits by  
11 the managing general agent, and the managing general agent has the  
12 authority to determine the amount of the interim profits by  
13 establishing loss reserves or controlling claim payments or in any  
14 other manner, interim profits shall not be paid to the managing general  
15 agent until one year after they are earned for property insurance  
16 business and five years after they are earned on casualty business and  
17 not until the profits have been verified under section 38 of this act.

18 (10) The managing general agent may not:

19 (a) Bind reinsurance or retrocessions on behalf of the insurer,  
20 except that the managing general agent may bind automatic reinsurance  
21 contracts under obligatory automatic agreements if the contract with  
22 the insurer contains reinsurance underwriting guidelines including, for  
23 both reinsurance assumed and ceded, a list of reinsurers with which the  
24 automatic agreements are in effect, the coverages and amounts or  
25 percentages that may be reinsured, and commission schedules;

26 (b) Commit the insurer to participate in insurance or reinsurance  
27 syndicates;

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

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

34 (e) Collect a payment from a reinsurer or commit the insurer to a  
35 claim settlement with a reinsurer, without prior approval of the  
36 insurer. If prior approval is given, a report shall be promptly  
37 forwarded to the insurer;

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

- 1 (g) Jointly employ an individual who is employed by the insurer; or  
2 (h) Appoint a submanaging general agent.

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

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

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

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

19 (5) Within thirty days of entering into or terminating a contract  
20 with a managing general agent, the insurer shall provide written  
21 notification of that appointment or termination to the commissioner.  
22 Notices of appointment of a managing general agent must include a  
23 statement of duties that the managing general agent is expected to  
24 perform on behalf of the insurer, the lines of insurance for which the  
25 managing general agent is to be authorized to act, and any other  
26 information the commissioner may request. This subsection applies to  
27 managing general agents operating in this state.

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

34 (7) An insurer may not appoint to its board of directors an  
35 officer, director, employee, subagent, or controlling shareholder of  
36 its managing general agents. This subsection does not apply to  
37 relationships governed by the Insurer Holding Company Act, chapter  
38 48.-- RCW (sections 1 through 15 of this act), or, if applicable, the

1 business transacted with Broker-controlled Property and Casualty  
2 Insurer Act, chapter 48.-- RCW (sections 16 through 21 of this act).

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

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

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

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

15 (c) The managing general agent to reimburse the insurer, the  
16 rehabilitator, or liquidator of the insurer for losses incurred by the  
17 insurer caused by a violation of this chapter committed by the managing  
18 general agent.

19 (2) The decision, determination, or order of the commissioner under  
20 this section is subject to judicial review under chapters 34.05 and  
21 48.04 RCW.

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

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

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

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

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

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

15 (2) As often as ((he)) the commissioner deems advisable and at  
16 least once in five years, the commissioner shall fully examine each  
17 rating organization and examining bureau licensed in this state. As  
18 often as he or she deems it advisable ((he)) the commissioner may  
19 examine each advisory organization and each joint underwriting or joint  
20 reinsurance group, association, or organization.

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

24 (4) In lieu of making ((his own)) an examination under this  
25 chapter, the commissioner may accept a full report of the last recent  
26 examination of a nondomestic ((insurer or)) rating or advisory  
27 organization, or joint underwriting or joint reinsurance group,  
28 association or organization, ((certified to)) as prepared by the  
29 insurance supervisory official of the state of domicile or of entry.  
30 In lieu of an examination under this chapter of a foreign or alien  
31 insurer licensed in this state, the commissioner may accept an  
32 examination report on the company as prepared by the insurance  
33 department for the company's state of domicile or port-of-entry state  
34 until January 1, 1994. Thereafter, an examination report may be  
35 accepted only if: (a) That insurance department was at the time of the  
36 examination accredited under the National Association of Insurance  
37 Commissioners' financial regulation standards and accreditation  
38 program; or (b) the examination was performed either under the  
39 supervision of an accredited insurance department or with the



1 participation of one or more examiners employed by an accredited state  
2 insurance department who, after a review of the examination work papers  
3 and report, state under oath that the examination was performed in a  
4 manner consistent with the standards and procedures required by their  
5 insurance department.

6 (5) The commissioner may elect to accept and rely on an audit  
7 report made by an independent certified public accountant for the  
8 insurer in the course of that part of the commissioner's examination  
9 covering the same general subject matter as the audit. The  
10 commissioner may incorporate the audit report in his or her report of  
11 the examination.

12 (6) For the purposes of completing an examination of any company  
13 under this chapter, the commissioner may examine or investigate any  
14 managing general agent or any other person, or the business of any  
15 managing general agent or other person, insofar as that examination or  
16 investigation is, in the sole discretion of the commissioner, necessary  
17 or material to the examination of the company.

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

20 Upon determining that an examination should be conducted, the  
21 commissioner or the commissioner's designee shall appoint one or more  
22 examiners to perform the examination and instruct them as to the scope  
23 of the examination. In conducting the examination, the examiner shall  
24 observe those guidelines and procedures set forth in the examiners'  
25 handbook adopted by the National Association of Insurance  
26 Commissioners. The commissioner may also employ such other guidelines  
27 or procedures as the commissioner may deem appropriate.

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

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

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

4       (3) The commissioner shall furnish a copy of the examination report  
5 to the person examined not less than ten days and, unless the time is  
6 extended by the commissioner, not more than thirty days prior to the  
7 filing of the report for public inspection in the commissioner's  
8 office. If such person so requests in writing within such (~~ten-day~~)  
9 period, the commissioner shall hold a hearing to consider objections of  
10 such person to the report as proposed, and shall not so file the report  
11 until after such hearing and until after any modifications in the  
12 report deemed necessary by the commissioner have been made.

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

18       (a) Adopting the examination report as filed or with modification  
19 or corrections. If the examination report reveals that the company is  
20 operating in violation of any law, rule, or order of the commissioner,  
21 the commissioner may order the company to take any action the  
22 commissioner considers necessary and appropriate to cure that  
23 violation;

24       (b) Rejecting the examination report with directions to the  
25 examiners to reopen the examination for purposes of obtaining  
26 additional data, documentation, or information, and refileing under this  
27 section; or

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

31       (5) All orders entered under subsection (4) of this section must be  
32 accompanied by findings and conclusions resulting from the  
33 commissioner's consideration and review of the examination report,  
34 relevant examiner workpapers, and any written submissions or rebuttals.  
35 Such an order is considered a final administrative decision and may be  
36 appealed under the Administrative Procedure Act, chapter 34.05 RCW, and  
37 must be served upon the company by certified mail, together with a copy  
38 of the adopted examination report. A copy of the adopted examination

1 report must be sent by certified mail to each director at the  
2 director's residence address.

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

10 (b) Nothing in this title prohibits the commissioner from  
11 disclosing the content of an examination report, preliminary  
12 examination report or results, or any matter relating thereto, to the  
13 insurance department of any other state or country, or to law  
14 enforcement officials of this or any other state or agency of the  
15 federal government at any time, so long as the agency or office  
16 receiving the report or matters relating thereto agrees in writing to  
17 hold it confidential and in a manner consistent with this chapter.

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

21 (d) Nothing contained in this section requires the commissioner to  
22 disclose any information or records that would indicate or show the  
23 existence or content of any investigation or activity of a criminal  
24 justice agency.

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

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

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

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

1 (2) Every other examination, whatsoever, or any part of the  
2 examination of any person domiciled or having its home offices in this  
3 state requiring travel and services outside this state, shall be made  
4 by the commissioner or by examiners designated by ~~((him))~~ the  
5 commissioner and shall be at the expense of the person examined; but a  
6 domestic insurer shall not be liable for the compensation of examiners  
7 employed by the commissioner for such services outside this state.

8 (3) When making an examination under this chapter, the commissioner  
9 may retain attorneys, appraisers, independent actuaries, independent  
10 certified public accountants, or other professionals and specialists as  
11 examiners, the cost of which shall be borne by the person who is the  
12 subject of the examination, except as provided in subsection (1) of  
13 this section.

14 (4) The person examined and liable therefor shall reimburse the  
15 state upon presentation of an itemized statement thereof, for the  
16 actual travel expenses of the commissioner's examiners, their  
17 reasonable living expense allowance, and their per diem compensation,  
18 including salary and the employer's cost of employee benefits, at a  
19 reasonable rate approved by the commissioner, incurred on account of  
20 the examination. Per diem salary and expenses for employees examining  
21 insurers domiciled outside the state of Washington shall be established  
22 by the commissioner on the basis of the National Association of  
23 Insurance Commissioner's recommended salary and expense schedule for  
24 zone examiners, or the salary schedule established by the state  
25 personnel board and the expense schedule established by the office of  
26 financial management, whichever is higher. Domestic title insurer  
27 shall pay the examination expense and costs to the commissioner as  
28 itemized and billed by him or her.

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

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

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

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

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

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

10 (c) An investment owner in shares of regulated diversified  
11 investment companies; or

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

14 (2) Notwithstanding the requirements of subsection (1) of this  
15 section, the commissioner may retain from time to time, on an  
16 individual basis, qualified actuaries, certified public accountants, or  
17 other similar individuals who are independently practicing their  
18 professions, even though those persons may from time to time be  
19 similarly employed or retained by persons subject to examination under  
20 this chapter.

21 NEW SECTION. **Sec. 49.** A new section is added to chapter 48.03 RCW  
22 to read as follows:

23 (1) No cause of action may arise nor may any liability be imposed  
24 against the commissioner, the commissioner's authorized  
25 representatives, or an examiner appointed by the commissioner for  
26 statements made or conduct performed in good faith while carrying out  
27 this chapter.

28 (2) No cause of action may arise nor may any liability be imposed  
29 against any person for the act of communicating or delivering  
30 information or data to the commissioner or the commissioner's  
31 authorized representative or examiner pursuant to an examination made  
32 under this chapter, if that act of communication or delivery was  
33 performed in good faith and without fraudulent intent or the intent to  
34 deceive.

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

37 (4) A person identified in subsection (1) of this section is  
38 entitled to an award of attorneys' fees and costs if he or she is the

1 prevailing party in a civil cause of action for libel, slander, or any  
2 other tort arising out of activities in carrying out this chapter and  
3 the party bringing the action was not substantially justified in doing  
4 so. For purposes of this section a proceeding is "substantially  
5 justified" if it had a reasonable basis in law or fact at the time that  
6 it was initiated.

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

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

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

18 (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority  
19 to transact any one kind of insurance as defined in chapter 48.11 RCW  
20 or combination of kinds of insurance as shown below, a foreign or alien  
21 insurer, whether stock or mutual, or a domestic insurer hereafter  
22 formed shall possess and thereafter maintain unimpaired paid-in capital  
23 stock, if a stock insurer, or unimpaired surplus if a mutual insurer,  
24 and shall possess when first so authorized additional funds in surplus  
25 as follows:

	Paid-in capital	
Kind or kinds of insurance	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

1 Any two of the following  
 2 kinds of insurance:  
 3 Property, marine &  
 4 transportation, general  
 5 casualty, vehicle,  
 6 surety, disability . . . . . 3,000,000 3,000,000  
 7 Multiple lines (all insurances  
 8 except life and title  
 9 insurance) . . . . . 3,000,000 3,000,000  
 10 Title (in accordance with the  
 11 provisions of chapter 48.29  
 12 RCW)

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

17 (3) An insurer holding a certificate of authority to transact  
 18 insurance in this state immediately prior to July 1, 1991, may continue  
 19 to be authorized to transact the same kinds of insurance as long as it  
 20 is otherwise qualified for such authority and thereafter maintains  
 21 unimpaired the amount of paid-in capital stock, if a stock insurer, or  
 22 basic surplus, if a mutual or reciprocal insurer, and special surplus  
 23 as required of it under laws in force immediately prior to such  
 24 effective date; and any proposed domestic insurer which is in process  
 25 of formation or financing under a solicitation permit which is  
 26 outstanding immediately prior to July 1, 1991, shall, if otherwise  
 27 qualified therefor, be authorized to transact any kind or kinds of  
 28 insurance upon the basis of the capital and surplus requirements of  
 29 such an insurer under the laws in force immediately prior to such  
 30 effective date. The requirements for paid-in capital stock, basic  
 31 surplus, and special surplus that were in effect immediately before  
 32 July 1, 1991, apply to any completed application for a certificate of  
 33 authority from a foreign or alien insurer that is on file with the  
 34 commissioner on July 1, 1991.

35 (4) The commissioner may, by rule, require insurers to maintain  
 36 additional capital and surplus based upon the type, volume, and nature  
 37 of insurance business transacted consistent with the methods then  
 38 adopted by the National Association of Insurance Commissioners for  
 39 determining the appropriate amount of additional capital and surplus to

1 be required. In the absence of an applicable rule, the commissioner  
2 may, after a hearing or with the consent of the insurer, require an  
3 insurer to have and maintain a larger amount of capital or surplus than  
4 prescribed under this section or the rules under this section, based  
5 upon the volume and kinds of insurance transacted by the insurer and on  
6 the principles of risk-based capital as determined by the National  
7 Association of Insurance Commissioners. This subsection applies only  
8 to insurers authorized to write life insurance, disability insurance,  
9 or both.

10 NEW SECTION. Sec. 51. A new section is added to chapter 48.01 RCW  
11 to read as follows:

12 (1) An insurer, health care service contractor, or health  
13 maintenance organization that offers coverage for dental services and  
14 is in full compliance with all applicable laws under chapter 48.05,  
15 48.44, or 48.46 RCW governing the financial supervision and solvency of  
16 such organizations, including but not limited to laws concerning  
17 capital and surplus requirements, reserves, deposits, bonds, and  
18 indemnities, may provide coverage for dental services, to individuals  
19 and to employers for the benefit of employees or for the benefit of  
20 employees and their dependents, by separate policy, contract, or rider.  
21 If an individual or an employer purchases coverage for dental services  
22 from such a company and the coverage is part of the uniform benefits  
23 package designed by the Washington health services commission, the  
24 certified health plan covering the individual, employees, or employees  
25 and dependents need not provide dental services under the uniform  
26 benefits package. A certified health plan may subcontract with such a  
27 company to provide any dental services required under the uniform  
28 benefits package.

29 (2) An insurer, health care service contractor, or health  
30 maintenance organization described in subsection (1) of this section is  
31 deemed certified and registered as a certified health plan under  
32 sections 427 and 432 of chapter . . . , Laws of 1993 (Engrossed Second  
33 Substitute Senate Bill No. 5304) for the delivery of coverage for  
34 dental services. The Washington health services commission and the  
35 commissioner shall adopt standards and procedures to permit, upon  
36 request, the prompt certification and registration of such a company.  
37 Such a company may offer coverage for dental services supplemental to  
38 the uniform benefits package, but the supplemental benefits are not



1 subject to sections 428, 452, and 453 of chapter . . . , Laws of 1993  
2 (Engrossed Second Substitute Senate Bill No. 5304).

3 **Sec. 52.** RCW 48.08.030 and 1947 c 79 s .08.03 are each amended to  
4 read as follows:

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

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

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

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

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

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

25 **Sec. 53.** RCW 48.11.140 and 1983 c 3 s 149 are each amended to read  
26 as follows:

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

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

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

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

5 (3) Reinsurance in an alien reinsurer not qualified under RCW  
6 48.05.300 may not be deducted in determining risk retained for the  
7 purposes of this section.

8 (4) In the case of surety insurance, the net retention shall be  
9 computed after deduction of reinsurances, the amount assumed by any  
10 co-surety, the value of any security deposited, pledged, or held  
11 subject to the consent of the surety and for the protection of the  
12 surety.

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

16 **Sec. 54.** RCW 48.12.180 and 1973 c 151 s 1 are each amended to read  
17 as follows:

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

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

29 (3) The stock of a subsidiary of an insurer shall be valued on the  
30 basis of the greater of (a) the value of only such of the assets of  
31 such subsidiary as would constitute lawful investments for the insurer  
32 if acquired or held directly by the insurer or (b) such other value  
33 determined pursuant to rules and cumulative limitations which shall be  
34 promulgated by the commissioner to effectuate the purposes of this  
35 chapter.

36 (4) The commissioner has full discretion in determining the method  
37 of calculating values according to the rules set forth in this section,

1 and consistent with such methods as then adopted by the National  
2 Association of Insurance Commissioners.

3 **Sec. 55.** RCW 48.12.190 and 1967 ex.s. c 95 s 10 are each amended  
4 to read as follows:

5 (1) Real property acquired pursuant to a mortgage loan or a  
6 contract for a deed, in the absence of a recent appraisal deemed by the  
7 commissioner to be reliable, shall not be valued at an amount greater  
8 than the unpaid principal of the defaulted loan or contract at the date  
9 of such acquisition, together with any taxes and expenses paid or  
10 incurred in connection with such acquisition, and the cost of  
11 improvements thereafter made by the insurer and any amounts thereafter  
12 paid by the insurer on assessments levied for improvements in  
13 connection with the property.

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

17 (3) Personal property acquired pursuant to chattel mortgages made  
18 under RCW 48.13.150 shall not be valued at an amount greater than the  
19 unpaid balance of principal on the defaulted loan at date of  
20 acquisition together with taxes and expenses incurred in connection  
21 with such acquisition, or the fair value of such property, whichever  
22 amount is the lesser.

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

27 **Sec. 56.** RCW 48.12.200 and 1947 c 79 s .12.20 are each amended to  
28 read as follows:

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

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

1       **Sec. 57.** RCW 48.14.010 and 1988 c 248 s 7 are each amended to read  
2 as follows:

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

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

- 5           (i) Original charter documents, bylaws or record of  
6               organization of insurers, or certified copies  
7               thereof, required to be filed . . . . . \$250.00  
8           (ii) Amended charter documents, or certified copy  
9               thereof, other than amendments of bylaws . . . . . \$ 10.00  
10          (iii) No additional charge or fee shall be required  
11               for filing any of such documents in the office  
12               of the secretary of state.

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

- 14           (i) Issuance . . . . . \$ 25.00  
15           (ii) Renewal . . . . . \$ 25.00

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

17       **(d) Organization or financing of domestic insurers and affiliated  
18       corporations:**

- 19           (i) Application for solicitation permit, filing . . . \$100.00  
20           (ii) Issuance of solicitation permit . . . . . \$ 25.00

21       **(e) Agents' licenses:**

- 22           (i) Agent's qualification licenses each year . . . . . \$ 25.00  
23           (ii) Filing of appointment of each such agent, each  
24               year . . . . . \$ 10.00  
25           (iii) Limited license issued pursuant to RCW  
26               48.17.190, each year . . . . . \$ 10.00

27       **(f) Reinsurance intermediary licenses:**

- 28           (i) Reinsurance intermediary-broker, each year           \$ 50.00  
29           (ii) Reinsurance intermediary-manager, each year       \$100.00

30       **(g) Brokers' licenses:**

- 31           (i) Broker's license, each year . . . . . \$ 50.00  
32           (ii) Surplus line broker, each year . . . . . \$100.00

33       ~~((g))~~ **(h) Solicitors' license, each year . . . . . \$ 10.00**

34       ~~((h))~~ **(i) Adjusters' licenses:**

- 35           (i) Independent adjuster, each year . . . . . \$ 25.00  
36           (ii) Public adjuster, each year . . . . . \$ 25.00

37       ~~((i))~~ **(j) Resident general agent's license, each year . . . \$ 25.00**

1 ~~((+j))~~ (k) Managing general agent appointment, each year . . \$100.00

2 (l) Examination for license, each examination:

3 All examinations, except examinations administered by  
4 an independent testing service, the fees for  
5 which are to be approved by the commissioner and  
6 collected directly by and retained by such  
7 independent testing service . . . . . \$ 10.00

8 ~~((+k))~~ (m) Miscellaneous services:

9 (i) Filing other documents . . . . . \$ 5.00

10 (ii) Commissioner's certificate under seal . . . . . \$ 5.00

11 (iii) Copy of documents filed in the commissioner's  
12 office, reasonable charge therefor as determined  
13 by the commissioner.

14 (2) All fees so collected shall be remitted by the commissioner to  
15 the state treasurer not later than the first business day following,  
16 and shall be placed to the credit of the general fund: PROVIDED, That  
17 fees for examinations administered by an independent testing service  
18 which are approved by the commissioner pursuant to subsection  
19 (1)~~((+j))~~ (l) of this section shall be collected directly by such  
20 independent testing service and retained by it.

21 NEW SECTION. Sec. 58. (1) An officer, manager, director, trustee,  
22 owner, employee, or agent of an insurer or other person with authority  
23 over or in charge of a segment of the insurer's affairs shall cooperate  
24 with the commissioner in a proceeding under this chapter or an  
25 investigation preliminary to the proceeding. The term "person" as used  
26 in this section includes a person who exercises control directly or  
27 indirectly over activities of the insurer through a holding company or  
28 other affiliate of the insurer. "To cooperate" as used in this section  
29 includes the following:

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

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

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

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

4 (4) A person included within subsection (1) of this section who  
5 fails to cooperate with the commissioner, or a person who obstructs or  
6 interferes with the commissioner in the conduct of a delinquency  
7 proceeding or an investigation preliminary or incidental thereto, or  
8 who violates an order the commissioner issued validly under this  
9 chapter may:

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

13 (b) After a hearing, be subject to the imposition by the  
14 commissioner of a civil penalty not to exceed ten thousand dollars and  
15 be subject further to the revocation or suspension of insurance  
16 licenses issued by the commissioner.

17 NEW SECTION. **Sec. 59.** (1) Except as provided in RCW 48.32A.060,  
18 no delinquency proceeding may be commenced under this chapter by anyone  
19 other than the commissioner of this state, and no court has  
20 jurisdiction to entertain a proceeding commenced by another person.

21 (2) No court of this state has jurisdiction to entertain a  
22 complaint praying for the dissolution, liquidation, rehabilitation,  
23 sequestration, conservation, or receivership of an insurer, or praying  
24 for an injunction or restraining order or other relief preliminary to,  
25 incidental to, or relating to the proceedings, other than in accordance  
26 with this chapter.

27 (3) In addition to other grounds for jurisdiction provided by the  
28 law of this state, a court of this state having jurisdiction of the  
29 subject matter has jurisdiction over a person served under the rules of  
30 civil procedure or other applicable provisions of law in an action  
31 brought by the receiver of a domestic insurer or an alien insurer  
32 domiciled in this state:

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

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

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

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

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

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

20 NEW SECTION. **Sec. 60.** (1) The persons entitled to protection  
21 under this section are:

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

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

33 (2) The commissioner and the commissioner's employees are immune  
34 from suit and liability, both personally and in their official  
35 capacities, for a claim for damage to or loss of property or personal  
36 injury or other civil liability caused by or resulting from an alleged  
37 act or omission of the commissioner or an employee arising out of or by  
38 reason of his or her duties or employment. However, nothing in this

1 subsection may be construed to hold the commissioner or an employee  
2 immune from suit or liability for any damage, loss, injury, or  
3 liability caused by the intentional or willful and wanton misconduct of  
4 the commissioner or an employee.

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

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

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

30 (c) In the event of an actual or threatened litigation against the  
31 commissioner or an employee for which immunity or indemnity may be  
32 available under this section, a reasonable amount of funds that in the  
33 judgment of the commissioner may be needed to provide immunity or  
34 indemnity shall be segregated and reserved from the assets of the  
35 insurer as security for the payment of indemnity until all applicable  
36 statutes of limitation have run or all actual or threatened actions  
37 against the commissioner or an employee have been completely and  
38 finally resolved, and all obligations of the insurer and the  
39 commissioner under this section have been satisfied.



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

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

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

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 61.** (1) The commissioner may petition the court  
2 alleging, with respect to a domestic insurer:

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

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

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

8        (2) Upon a filing under subsection (1) of this section, the court  
9 may issue forthwith, ex parte and without a hearing, the requested  
10 order that shall: Direct the commissioner to take possession and  
11 control of all or a part of the property, books, accounts, documents,  
12 and other records of an insurer, and of the premises occupied by it for  
13 transaction of its business; and until further order of the court  
14 enjoin the insurer and its officers, managers, agents, and employees  
15 from disposition of its property and from the transaction of its  
16 business except with the written consent of the commissioner.

17        (3) The court shall specify in the order what the order's duration  
18 shall be, which shall be such time as the court deems necessary for the  
19 commissioner to ascertain the condition of the insurer. On motion of  
20 either party or on its own motion, the court may from time to time hold  
21 hearings it deems desirable after such notice as it deems appropriate,  
22 and may extend, shorten, or modify the terms of the seizure order. The  
23 court shall vacate the seizure order if the commissioner fails to  
24 commence a formal proceeding under this chapter after having had a  
25 reasonable opportunity to do so. An order of the court pursuant to a  
26 formal proceeding under this chapter vacates the seizure order.

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

29        (5) An insurer subject to an ex parte order under this section may  
30 petition the court at any time after the issuance of an order under  
31 this section for a hearing and review of the order. The court shall  
32 hold the hearing and review not more than fifteen days after the  
33 request. A hearing under this subsection may be held privately in  
34 chambers, and it must be so held if the insurer proceeded against so  
35 requests.

36        (6) If, at any time after the issuance of an order under this  
37 section, it appears to the court that a person whose interest is or  
38 will be substantially affected by the order did not appear at the  
39 hearing and has not been served, the court may order that notice be

1 given. An order that notice be given does not stay the effect of an  
2 order previously issued by the court.

3 NEW SECTION. **Sec. 62.** (1) All policies, including bonds and other  
4 noncancellable business, other than life or health insurance or  
5 annuities, in effect at the time of issuance of an order of liquidation  
6 continue in force only until the earliest of:

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

9 (b) The expiration of the policy coverage;

10 (c) The date when the insured has replaced the insurance coverage  
11 with equivalent insurance in another insurer or otherwise terminated  
12 the policy;

13 (d) The liquidator has effected a transfer of the policy  
14 obligation; or

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

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

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

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

27 NEW SECTION. **Sec. 63.** (1) Upon issuance of an order appointing a  
28 liquidator of a domestic insurer or of an alien insurer domiciled in  
29 this state, an action at law or equity or in arbitration may not be  
30 brought against the insurer or liquidator, whether in this state or  
31 elsewhere, nor may such an existing action be maintained or further  
32 presented after issuance of the order. The courts of this state shall  
33 give full faith and credit to injunctions against the liquidator or the  
34 company when the injunctions are included in an order to liquidate an  
35 insurer issued under laws in other states corresponding to this  
36 subsection. Whenever, in the liquidator's judgment, protection of the  
37 estate of the insurer necessitates intervention in an action against

1 the insurer that is pending outside this state, the liquidator may  
2 intervene in the action. The liquidator may defend an action in which  
3 he or she intervenes under this section at the expense of the estate of  
4 the insurer.

5 (2) The liquidator may, upon or after an order for liquidation,  
6 within two years or such other longer time as applicable law may  
7 permit, institute an action or proceeding on behalf of the estate of  
8 the insurer upon a cause of action against which the period of  
9 limitation fixed by applicable law has not expired at the time of the  
10 filing of the petition upon which the order is entered. Where, by an  
11 agreement, a period of limitation is fixed for instituting a suit or  
12 proceeding upon a claim, or for filing a claim, proof of claim, proof  
13 of loss, demand, notice, or the like, or where in a proceeding,  
14 judicial or otherwise, a period of limitation is fixed, either in the  
15 proceeding or by applicable law, for taking an action, filing a claim  
16 or pleading, or doing an act, and where in such a case the period had  
17 not expired at the date of the filing of the petition, the liquidator  
18 may, for the benefit of the estate, take such an action or do such an  
19 act, required of or permitted to the insurer, within a period of one  
20 hundred eighty days after the entry of an order for liquidation, or  
21 within such further period as is shown to the satisfaction of the court  
22 not to be unfairly prejudicial to the other party.

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

29 (4) A guaranty association or foreign guaranty association has  
30 standing to appear in a court proceeding concerning the liquidation of  
31 an insurer if the association is or may become liable to act as a  
32 result of the liquidation.

33 NEW SECTION. **Sec. 64.** The amount recoverable by the commissioner  
34 from reinsurers may not be reduced as a result of the delinquency  
35 proceedings, regardless of any provision in the reinsurance contract or  
36 other agreement except as provided in RCW 48.31.290. Payment made  
37 directly to an insured or other creditor does not diminish the  
38 reinsurer's obligation to the insurer's estate except when the

1 reinsurance contract provided for direct coverage of a named insured  
2 and the payment was made in discharge of that obligation.

3 NEW SECTION. **Sec. 65.** (1)(a) An agent, broker, premium finance  
4 company, or any other person, other than the policy owner or the  
5 insured, responsible for the payment of a premium is obligated to pay  
6 any unpaid premium for the full policy term due the insurer at the time  
7 of the declaration of insolvency, whether earned or unearned, as shown  
8 on the records of the insurer. The liquidator also has the right to  
9 recover from the person a part of an unearned premium that represents  
10 commission of the person. Credits or setoffs or both may not be  
11 allowed to an agent, broker, or premium finance company for amounts  
12 advanced to the insurer by the agent, broker, or premium finance  
13 company on behalf of, but in the absence of a payment by, the policy  
14 owner or the insured.

15 (b) Notwithstanding (a) of this subsection, the agent, broker,  
16 premium finance company, or other person is not liable for uncollected  
17 unearned premium of the insurer. A presumption exists that the premium  
18 as shown on the books of the insurer is collected, and the burden is  
19 upon the agent, broker, premium finance company, or other person to  
20 demonstrate by a preponderance of the evidence that the unearned  
21 premium was not actually collected. For purposes of this subsection,  
22 "unearned premium" means that portion of an insurance premium covering  
23 the unexpired term of the policy or the unexpired period of the policy  
24 period.

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

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

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

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

34 (3) Before the commissioner may take an action as set forth in  
35 subsection (2) of this section, he or she shall give written notice to  
36 the person accused of violating the law, stating specifically the  
37 nature of the alleged violation, and fixing a time and place, at least  
38 ten days thereafter, when a hearing on the matter shall be held. After

1 the hearing, or upon failure of the accused to appear at the hearing,  
2 the commissioner, if he or she finds a violation, shall impose those  
3 penalties under subsection (2) of this section that he or she deems  
4 advisable.

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

9 NEW SECTION. **Sec. 66.** (1) When the liquidator denies a claim in  
10 whole or in part, the liquidator shall give written notice of the  
11 determination to the claimant or the claimant's attorney by first class  
12 mail at the address shown in the proof of claim. Within sixty days  
13 from the mailing of the notice, the claimant may file his or her  
14 objections with the liquidator. If no such a filing is made, the  
15 claimant may not further object to the determination.

16 (2) Whenever the claimant files objections with the liquidator and  
17 the liquidator does not alter his or her denial of the claim as a  
18 result of the objections, the liquidator shall ask the court for a  
19 hearing as soon as practicable and give notice of the hearing by first  
20 class mail to the claimant or the claimant's attorney and to other  
21 persons directly affected, not less than ten nor more than thirty days  
22 before the date of the hearing. The matter may be heard by the court  
23 or by a court-appointed referee who shall submit findings of fact along  
24 with his or her recommendation.

25 NEW SECTION. **Sec. 67.** Whenever a creditor whose claim against an  
26 insurer is secured, in whole or in part, by the undertaking of another  
27 person, fails to prove and file that claim, the other person may do so  
28 in the creditor's name, and is subrogated to the rights of the  
29 creditor, whether the claim has been filed by the creditor or by the  
30 other person in the creditor's name, to the extent that he or she  
31 discharges the undertaking. In the absence of an agreement with the  
32 creditor to the contrary, the other person is not entitled to a  
33 distribution until the amount paid to the creditor on the undertaking  
34 plus the distributions paid on the claim from the insurer's estate to  
35 the creditor equals the amount of the entire claim of the creditor.  
36 The creditor shall hold any excess received by him or her in trust for

1 the other person. The term "other person" as used in this section does  
2 not apply to a guaranty association or foreign guaranty association.

3 NEW SECTION. **Sec. 68.** Unclaimed funds subject to distribution  
4 remaining in the liquidator's hands when he or she is ready to apply to  
5 the court for discharge, including the amount distributable to a person  
6 who is unknown or cannot be found, shall be deposited with the state  
7 treasurer, and shall be paid without interest to the person entitled to  
8 them or his or her legal representative upon proof satisfactory to the  
9 state treasurer of his or her right to them. An amount on deposit not  
10 claimed within six years from the discharge of the liquidator is deemed  
11 to have been abandoned and shall be escheated without formal escheat  
12 proceedings and be deposited with the state treasurer.

13 NEW SECTION. **Sec. 69.** After the liquidation proceeding has been  
14 terminated and the liquidator discharged, the commissioner or other  
15 interested party may at any time petition the court to reopen the  
16 proceedings for good cause, including the discovery of additional  
17 assets. If the court is satisfied that there is justification for  
18 reopening, it shall so order.

19 NEW SECTION. **Sec. 70.** (1) If no domiciliary receiver has been  
20 appointed, the commissioner may apply to the court for an order  
21 directing him or her to liquidate the assets found in this state of a  
22 foreign insurer or an alien insurer not domiciled in this state, on any  
23 of the grounds stated in: RCW 48.31.030, except subsection (10) of  
24 that section; 48.31.050(2); or 48.31.080.

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

28 (3) If it appears to the court that the best interests of  
29 creditors, policyholders, and the public require, the court may issue  
30 an order to liquidate in whatever terms it deems appropriate. The  
31 filing or recording of the order with the recorder of deeds of the  
32 county in which the principal business of the company in this state is  
33 located or the county in which its principal office or place of  
34 business in this state is located, imparts the same notice as a deed or  
35 other evidence of title duly filed or recorded with that recorder of  
36 deeds would have imparted.

1 (4) If a domiciliary liquidator is appointed in a reciprocal state  
2 while a liquidation is proceeding under this section, the liquidator  
3 under this section shall thereafter act as ancillary receiver under RCW  
4 48.31.130 (as recodified by this act). If a domiciliary liquidator is  
5 appointed in a nonreciprocal state while a liquidation is proceeding  
6 under this section, the liquidator under this section may petition the  
7 court for permission to act as ancillary receiver under RCW 48.31.130  
8 (as recodified by this act).

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

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

20 NEW SECTION. **Sec. 71.** (1) Except as to special deposits and  
21 security on secured claims under RCW 48.31.130(2) (as recodified by  
22 this act), the domiciliary liquidator of an insurer domiciled in a  
23 reciprocal state is vested by operation of law with the title to all of  
24 the assets, property, contracts, and rights of action, agents'  
25 balances, and all the books, accounts, and other records of the insurer  
26 located in this state. The date of vesting is the date of the filing  
27 of the petition, if that date is specified by the domiciliary law for  
28 the vesting of property in the domiciliary state. Otherwise, the date  
29 of vesting is the date of entry of the order directing possession to be  
30 taken. The domiciliary liquidator has the immediate right to recover  
31 balances due from agents and to obtain possession of the books,  
32 accounts, and other records of the insurer located in this state. The  
33 domiciliary liquidator also has the right to recover all other assets  
34 of the insurer located in this state, subject to RCW 48.31.130 (as  
35 recodified by this act).

36 (2) If a domiciliary liquidator is appointed for an insurer not  
37 domiciled in a reciprocal state, the commissioner of this state is  
38 vested by operation of law with the title to all of the property,



1 contracts, and rights of action, and all the books, accounts, and other  
2 records of the insurer located in this state, at the same time that the  
3 domiciliary liquidator is vested with title in the domicile. The  
4 commissioner of this state may petition for a conservation or  
5 liquidation order under RCW 48.31.100 or 48.31.130 (as recodified by  
6 this act), or for an ancillary receivership under RCW 48.31.130 (as  
7 recodified by this act), or after approval by the court may transfer  
8 title to the domiciliary liquidator, as the interests of justice and  
9 the equitable distribution of the assets require.

10 (3) Claimants residing in this state may file claims with the  
11 liquidator or ancillary receiver, if any, in this state or with the  
12 domiciliary liquidator, if the domiciliary law permits. The claims  
13 must be filed on or before the last date fixed for the filing of claims  
14 in the domiciliary liquidation proceedings.

15 NEW SECTION. **Sec. 72.** The commissioner in his or her sole  
16 discretion may institute proceedings under section 61 of this act at  
17 the request of the commissioner or other appropriate insurance official  
18 of the domiciliary state of a foreign or alien insurer having property  
19 located in this state.

20 NEW SECTION. **Sec. 73.** (1) In a liquidation proceeding in this  
21 state involving one or more reciprocal states, the order of  
22 distribution of the domiciliary state controls as to claims of  
23 residents of this and reciprocal states. Claims of residents of  
24 reciprocal states shall be given equal priority of payment from general  
25 assets regardless of where the assets are located.

26 (2) The owners of special deposit claims against an insurer for  
27 which a liquidator is appointed in this or any other state shall be  
28 given priority against the special deposits in accordance with the  
29 statutes governing the creation and maintenance of the deposits. If  
30 there is a deficiency in a deposit, so that the claims secured by it  
31 are not fully discharged from it, the claimants may share in the  
32 general assets, but the sharing shall be deferred until general  
33 creditors, and also claimants against other special deposits who have  
34 received smaller percentages from their respective special deposits,  
35 have been paid percentages of their claims equal to the percentage paid  
36 from the special deposit.

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

8 NEW SECTION. **Sec. 74.** If an ancillary receiver in another state  
9 or foreign country, whether called by that name or not, fails to  
10 transfer to the domiciliary liquidator in this state assets within his  
11 or her control other than special deposits, diminished only by the  
12 expenses of the ancillary receivership, if any, then the claims filed  
13 in the ancillary receivership, other than special deposit claims or  
14 secured claims, shall be placed in the class of claims under RCW  
15 48.31.280(7).

16 **Sec. 75.** RCW 48.31.030 and 1949 c 190 s 28 are each amended to  
17 read as follows:

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

21 (1) Is insolvent; or

22 (2) Has refused to submit its books, records, accounts, or affairs  
23 to the reasonable examination of the commissioner; or

24 (3) Has failed to comply with the commissioner's order, made  
25 pursuant to law, to make good an impairment of capital (if a stock  
26 insurer) or an impairment of assets (if a mutual or reciprocal insurer)  
27 within the time prescribed by law; or

28 (4) Has transferred or attempted to transfer substantially its  
29 entire property or business, or has entered into any transaction the  
30 effect of which is to merge substantially its entire property or  
31 business in that of any other insurer without first having obtained the  
32 written approval of the commissioner; or

33 (5) Is found, after examination, to be in such condition that its  
34 further transaction of business will be hazardous to its policyholders,  
35 or to its creditors, or to its members, subscribers, or stockholders,  
36 or to the public; or

37 (6) Has willfully violated its charter or any law of this state; or

1 (7) Has an officer, director, or manager who has refused to be  
2 examined under oath, concerning its affairs, for which purpose the  
3 commissioner is authorized to conduct and to enforce by all appropriate  
4 and available means any such examination under oath in any other state  
5 or territory of the United States, in which any such officer, director,  
6 or manager may then presently be, to the full extent permitted by the  
7 laws of any such other state or territory, this special authorization  
8 considered; or

9 (8) Has been the subject of an application for the appointment of  
10 a receiver, trustee, custodian, or sequestrator of the insurer or of  
11 its property, or if a receiver, trustee, custodian, or sequestrator is  
12 appointed by a federal court or if such appointment is imminent; or

13 (9) Has consented to such an order through a majority of its  
14 directors, stockholders, members, or subscribers; or

15 (10) Has failed to pay a final judgment rendered against it in any  
16 state upon any insurance contract issued or assumed by it, within  
17 thirty days after the judgment became final or within thirty days after  
18 time for taking an appeal has expired, or within thirty days after  
19 dismissal of an appeal before final determination, whichever date is  
20 the later; or

21 (11) There is reasonable cause to believe that there has been  
22 embezzlement from the insurer, wrongful sequestration or diversion of  
23 the insurer's assets, forgery or fraud affecting the insurer, or other  
24 illegal conduct in, by, or with respect to the insurer that, if  
25 established, would endanger assets in an amount threatening the  
26 solvency of the insurer; or

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

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

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

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

4       **Sec. 76.** RCW 48.31.040 and 1947 c 79 s .31.04 are each amended to  
5 read as follows:

6       (1) An order to rehabilitate a domestic insurer shall direct the  
7 commissioner forthwith to take possession of the property of the  
8 insurer and to conduct the business thereof, and to take such steps  
9 toward removal of the causes and conditions which have made  
10 rehabilitation necessary as the court may direct.

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

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

21       (4) An order to rehabilitate the business of a domestic insurer, or  
22 an alien insurer domiciled in this state, shall appoint the  
23 commissioner and his or her successors in office as the rehabilitator,  
24 and shall direct the rehabilitator to immediately take possession of  
25 the assets of the insurer, and to administer them under the general  
26 supervision of the court. The filing or recording of the order with  
27 the recorder of deeds of the county in this state in which the  
28 principal business of the company is conducted, or the county in this  
29 state in which the company's principal office or place of business is  
30 located, imparts the same notice as a deed or other evidence of title  
31 duly filed or recorded with that recorder of deeds would have imparted.  
32 The order to rehabilitate the insurer by operation of law vests title  
33 to all assets of the insurer in the rehabilitator.

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

1       (6) Entry of an order of rehabilitation does not constitute an  
2 anticipatory breach of contracts of the insurer nor may it be grounds  
3 for retroactive revocation or retroactive cancellation of contracts of  
4 the insurer, unless the revocation or cancellation is done by the  
5 rehabilitator.

6       NEW SECTION. Sec. 77. A new section is added to chapter 48.31 RCW  
7 to read as follows:

8       (1) A court in this state before which an action or proceeding in  
9 which the insurer is a party, or is obligated to defend a party, is  
10 pending when a rehabilitation order against the insurer is entered  
11 shall stay the action or proceeding for ninety days and such additional  
12 time as is necessary for the rehabilitator to obtain proper  
13 representation and prepare for further proceedings. The rehabilitator  
14 shall take such action respecting the pending litigation as he or she  
15 deems necessary in the interests of justice and for the protection of  
16 creditors, policyholders, and the public. The rehabilitator shall  
17 immediately consider all litigation pending outside this state and  
18 shall petition the courts having jurisdiction over that litigation for  
19 stays whenever necessary to protect the estate of the insurer.

20       (2) A statute of limitations or defense of laches does not run with  
21 respect to an action by or against an insurer between the filing of a  
22 petition for appointment of a rehabilitator for that insurer and the  
23 order granting or denying that petition. An action against the insurer  
24 that might have been commenced when the petition was filed may be  
25 commenced for at least sixty days after the order of rehabilitation is  
26 entered or the petition is denied. The rehabilitator may, upon an  
27 order for rehabilitation, within one year or such other longer time as  
28 applicable law may permit, institute an action or proceeding on behalf  
29 of the insurer upon a cause of action against which the period of  
30 limitation fixed by applicable law has not expired at the time of the  
31 filing of the petition upon which the order is entered.

32       (3) A guaranty association or foreign guaranty association covering  
33 life or health insurance or annuities has standing to appear in a court  
34 proceeding concerning the rehabilitation of a life or health insurer if  
35 the association is or may become liable to act as a result of the  
36 rehabilitation.

1       **Sec. 78.** RCW 48.31.110 and 1961 c 194 s 12 are each amended to  
2 read as follows:

3       This (~~section and RCW 48.31.120 to 48.31.180, inclusive, comprise~~  
4 ~~and~~) chapter may be known and cited as the Uniform Insurers  
5 Liquidation Act. For the purposes of this (~~aet~~) chapter:

6       (1) "Insurer" means any person, firm, corporation, association, or  
7 aggregation of persons doing an insurance business and subject to the  
8 insurance supervisory authority of, or to liquidation, rehabilitation,  
9 reorganization, or conservation by, the commissioner, or the equivalent  
10 insurance supervisory official of another state.

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

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

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

17       (5) "Domiciliary state" means the state in which an insurer is  
18 incorporated or organized, or, in the case of an insurer incorporated  
19 or organized in a foreign country, the state in which such insurer,  
20 having become authorized to do business in such state, has, at the  
21 commencement of delinquency proceedings, the largest amount of its  
22 assets held in trust and assets held on deposit for the benefit of its  
23 policyholders or policyholders and creditors in the United States; and  
24 any such insurer is deemed to be domiciled in such state.

25       (6) "Ancillary state" means any state other than a domiciliary  
26 state.

27       (7) "Reciprocal state" means any state other than this state in  
28 which in substance and effect the provisions of this (~~aet~~) chapter  
29 are in force, including the provisions requiring that the insurance  
30 commissioner or equivalent insurance supervisory official be the  
31 receiver of a delinquent insurer.

32       (8) "General assets" means all property, real, personal, or  
33 otherwise, not specifically mortgaged, pledged, deposited, or otherwise  
34 encumbered for the security or benefit of specified persons or a  
35 limited class or classes of persons, and as to such specifically  
36 encumbered property the term includes all such property or its proceeds  
37 in excess of the amount necessary to discharge the sum or sums secured  
38 thereby. Assets held in trust and assets held on deposit for the

1 security or benefit of all policyholders, or all policyholders and  
2 creditors in the United States, shall be deemed general assets.

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

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

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

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

18 **Sec. 79.** RCW 48.31.160 and 1947 c 79 s .31.16 are each amended to  
19 read as follows:

20 (1) In a delinquency proceeding against an insurer domiciled in  
21 this state, claims owing to residents of ancillary states shall be  
22 preferred claims if like claims are preferred under the laws of this  
23 state. All such claims whether owing to residents or nonresidents  
24 shall be given equal priority of payment from general assets regardless  
25 of where such assets are located.

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

29 (3) The owners of special deposit claims against an insurer for  
30 which a receiver is appointed in this or any other state shall be given  
31 priority against their several special deposits in accordance with the  
32 provisions of the statutes governing the creation and maintenance of  
33 such deposits. If there is a deficiency in any such deposit so that  
34 the claims secured thereby are not fully discharged therefrom, the  
35 claimants may share in the general assets, but such sharing shall be  
36 deferred until general creditors, and also claimants against other  
37 special deposits who have received smaller percentages from their

1 respective special deposits, have been paid percentages of their claims  
2 equal to the percentage paid from the special deposit.

3 (4) The owner of a secured claim against an insurer for which a  
4 receiver has been appointed in this or any other state may surrender  
5 his security and file his claim as a general creditor, or the claim may  
6 be discharged by resort to the security, in which case the deficiency,  
7 if any, shall be treated as a claim against the general assets of the  
8 insurer on the same basis as claims of unsecured creditors. If the  
9 amount of the deficiency has been adjudicated in ancillary proceedings  
10 as provided in this ~~((aet))~~ chapter, or if it has been adjudicated by  
11 a court of competent jurisdiction in proceedings in which the  
12 domiciliary receiver has had notice and opportunity to be heard, such  
13 amount shall be conclusive; otherwise the amount shall be determined in  
14 the delinquency proceeding in the domiciliary state.

15 **Sec. 80.** RCW 48.31.180 and 1947 c 79 s .31.18 are each amended to  
16 read as follows:

17 (1) If any provision of this ~~((aet))~~ chapter or the application  
18 thereof to any person or circumstances is held invalid, such invalidity  
19 shall not affect other provisions or applications of the ~~((aet))~~  
20 chapter which can be given effect without the invalid provision or  
21 application, and to this end the provisions of this ~~((aet))~~ chapter are  
22 declared to be severable.

23 (2) This Uniform Insurers Liquidation Act shall be so interpreted  
24 and construed as to effectuate its general purpose to make uniform the  
25 law of those states that enact it. To the extent that its provisions,  
26 when applicable, conflict with ~~((other))~~ provisions of ~~((this))~~ chapter  
27 48.31 RCW, the provisions of this ~~((aet))~~ chapter shall control.

28 NEW SECTION. **Sec. 81.** RCW 48.31.110, 48.31.120, 48.31.130,  
29 48.31.140, 48.31.150, 48.31.160, 48.31.170, and 48.31.180 are  
30 recodified to constitute a new chapter in Title 48 RCW.

31 **Sec. 82.** RCW 48.31.190 and 1988 c 202 s 46 are each amended to  
32 read as follows:

33 (1) Proceedings under this chapter involving a domestic insurer  
34 shall be commenced in the superior court for the county in which is  
35 located the insurer's home office or, at the election of the  
36 commissioner, in the superior court for Thurston county. Proceedings



1 under this chapter involving other insurers shall be commenced in the  
2 superior court for Thurston county.

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

7 (3) Upon a showing of an emergency or threat of imminent loss to  
8 policyholders of the insurer the court may issue an ex parte order  
9 authorizing the commissioner immediately to take over the premises and  
10 assets of the insurer, the commissioner then to preserve the status  
11 quo, pending a hearing on the order to show cause, which shall be heard  
12 as soon as the court calendar permits in preference to other civil  
13 cases.

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

18 (5) On the return of such order to show cause, and after a full  
19 hearing, the court shall either deny the relief sought in the  
20 application or grant the relief sought in the application together with  
21 such other relief as the nature of the case and the interest of  
22 policyholders, creditors, stockholders, members, subscribers, or the  
23 public may require.

24 (6) No appellate review of a superior court order, entered after a  
25 hearing, granting the commissioner's petition to rehabilitate an  
26 insurer or to carry out an insolvency proceeding under this chapter,  
27 shall stay the action of the commissioner in the discharge of his  
28 responsibilities under this chapter, pending a decision by the  
29 appellate court in the matter.

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

35 **Sec. 83.** RCW 48.31.280 and 1975-'76 2nd ex.s. c 109 s 1 are each  
36 amended to read as follows:

37 ~~((1) Compensation actually owing to employees other than officers~~  
38 ~~of an insurer, for services rendered within three months prior to the~~

1 commencement of a proceeding against the insurer under this chapter,  
2 but not exceeding three hundred dollars for each such employee, shall  
3 be paid prior to the payment of any other debt or claim, and in the  
4 discretion of the commissioner may be paid as soon as practicable after  
5 the proceeding has been commenced; except, that at all times the  
6 commissioner shall reserve such funds as will in his opinion be  
7 sufficient for the expenses of administration. Such priority shall be  
8 in lieu of any other similar priority which may be authorized by law as  
9 to the wages or compensation of such employees.

10 (2) The priorities of distribution in a liquidation proceeding  
11 shall be in the following order:

12 (a) Expenses of administration;

13 (b) Compensation of employees as provided in subsection (1) of this  
14 section;

15 (c) Federal, state, and local taxes;

16 (d) Claims arising out of and within the coverages of insurance  
17 policies issued by the insurer being liquidated for losses incurred,  
18 including:

19 (i) Third party claims and claims for unearned premiums;

20 (ii) Claims presented by the Washington Insurance Guaranty  
21 Association which represent "covered claims" as defined in RCW  
22 48.32.030(4) and which have been paid by such association;

23 (iii) Claims to which the Washington life and disability insurance  
24 guaranty association shall have become subrogated under the provisions  
25 of RCW 48.32A.060; and

26 (iv) Claims similar to those described in parts (ii) and (iii) of  
27 this subsection as presented by similar guaranty associations of other  
28 states; and

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

36 (1) Class 1. The costs and expenses of administration during  
37 rehabilitation and liquidation, including but not limited to the  
38 following:

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

3       (b) Compensation for all authorized services rendered in the  
4 rehabilitation and liquidation;

5       (c) Necessary filing fees;

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

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

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

11       (2) Class 2. Reasonable compensation to employees for services  
12 performed to the extent that they do not exceed two months of monetary  
13 compensation and represent payment for services performed within one  
14 year before the filing of the petition for liquidation or, if  
15 rehabilitation preceded liquidation, within one year before the filing  
16 of the petition for rehabilitation. Principal officers and directors  
17 are not entitled to the benefit of this priority except as otherwise  
18 approved by the liquidator and the court. The priority is in lieu of  
19 any other similar priority that may be authorized by law as to wages or  
20 compensation of employees.

21       (3) Class 3. Loss claims. For purposes of this section, "loss  
22 claims" are all claims under policies, including claims of the federal  
23 or a state or local government, for losses incurred, including third-  
24 party claims and all claims of a guaranty association or foreign  
25 guaranty association. All claims under life insurance and annuity  
26 policies, whether for death proceeds, annuity proceeds, or investment  
27 values, are loss claims. That portion of any loss indemnification that  
28 is provided for by other benefits or advantages recovered by the  
29 claimant, is not included in this class, other than benefits or  
30 advantages recovered or recoverable in discharge of familial obligation  
31 of support or by way of succession at death or a proceeds of life  
32 insurance, or as gratuities. No payment by an employer to his or her  
33 employee may be treated as a gratuity.

34       (4) Class 4. Claims under nonassessable policies for unearned  
35 premium or other premium refunds and claims of general creditors  
36 including claims of ceding and assuming companies in their capacity as  
37 such.

38       (5) Class 5. Claims of the federal or any state or local  
39 government except those under subsection (3) of this section. Claims,

1 including those of any governmental body for a penalty or forfeiture,  
2 are allowed in this class only to the extent of the pecuniary loss  
3 sustained from the act, transaction, or proceeding out of which the  
4 penalty or forfeiture arose, with reasonable and actual costs  
5 occasioned thereby. The remainder of such claims are postponed to the  
6 class of claims under subsection (8) of this section.

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

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

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

15 **Sec. 84.** RCW 48.31.300 and 1947 c 79 s .31.30 are each amended to  
16 read as follows:

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

21 (a) Such claim becomes absolute against the insurer on or before  
22 the last day fixed for filing of proofs of claim against the assets of  
23 such insurer, or

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

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

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

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

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

4 No judgment against such an insured taken after the date of the  
5 entry of the liquidation order shall be considered in the liquidation  
6 proceedings as evidence of liability, or of the amount of damages, and  
7 no judgment against an insured taken by default, inquest or by  
8 collusion prior to the entry of the liquidation order shall be  
9 considered as conclusive evidence in the liquidation proceeding either  
10 of the liability of such insured to such person upon such cause of  
11 action or of the amount of damages to which such person is therein  
12 entitled.

13 (3) No claim of any secured claimant shall be allowed at a sum  
14 greater than the difference between the value of the claim without  
15 security and the value of the security itself as of the date of the  
16 entry of the order of liquidation or such other date set by the court  
17 for fixation of rights and liabilities as provided in RCW 48.31.260  
18 unless the claimant shall surrender his or her security to the  
19 commissioner in which event the claim shall be allowed in the full  
20 amount for which it is valued.

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

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

25 NEW SECTION. Sec. 85. A new section is added to chapter 48.74 RCW  
26 to read as follows:

27 (1) Every life insurance company doing business in this state shall  
28 annually submit the opinion of a qualified actuary as to whether the  
29 reserves and related actuarial items held in support of the policies  
30 and contracts specified by the commissioner by rule are computed  
31 appropriately, are based on assumptions that satisfy contractual  
32 provisions, are consistent with prior reported amounts, and comply with  
33 applicable laws of this state. The commissioner by rule shall define  
34 the specifics of this opinion and add any other items deemed to be  
35 necessary to its scope.

36 (2)(a) Every life insurance company, except as exempted by rule,  
37 shall also include in the opinion required under subsection (1) of this  
38 section an opinion as to whether the reserves and related actuarial

1 items held in support of the policies and contracts specified by the  
2 commissioner by rule, when considered in light of the assets held by  
3 the company with respect to the reserves and related actuarial items,  
4 including but not limited to the investment earnings on the assets and  
5 the considerations anticipated to be received and retained under the  
6 policies and contracts, make adequate provision for the company's  
7 obligations under the policies and contracts, including but not limited  
8 to the benefits under and expenses associated with the policies and  
9 contracts.

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

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

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

18 (b) If the insurance company fails to provide a supporting  
19 memorandum at the request of the commissioner within a period specified  
20 by rule or if the commissioner determines that the supporting  
21 memorandum provided by the insurance company fails to meet the  
22 standards prescribed by the rules or is otherwise unacceptable to the  
23 commissioner, the commissioner may engage a qualified actuary at the  
24 expense of the company to review the opinion and the basis for the  
25 opinion and prepare such supporting memorandum as is required by the  
26 commissioner.

27 (4) A memorandum in support of the opinion, and other material  
28 provided by the company to the commissioner in connection with it, must  
29 be kept confidential by the commissioner and may not be made public and  
30 is not subject to subpoena, other than for the purpose of defending an  
31 action seeking damages from any person by reason of an action required  
32 by this section or by rules adopted under it. However, the  
33 commissioner may otherwise release the memorandum or other material (a)  
34 with the written consent of the company or (b) to the American Academy  
35 of Actuaries upon request stating that the memorandum or other material  
36 is required for the purpose of professional disciplinary proceedings  
37 and setting forth procedures satisfactory to the commissioner for  
38 preserving the confidentiality of the memorandum or other material.  
39 Once any portion of the confidential memorandum is cited by the company

1 in its marketing or is cited before any governmental agency other than  
2 a state insurance department or is released by the company to the news  
3 media, all portions of the confidential memorandum are no longer  
4 confidential.

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

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

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

13 (c) The opinion must be based on standards adopted by the  
14 commissioner, who in setting the standards shall give due regard to the  
15 standards established by the actuarial standards board or its  
16 successors.

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

22 (e) For purposes of this section, "qualified actuary" means a  
23 person who meets qualifications set by the commissioner with due regard  
24 to the qualifications established for membership in the American  
25 Academy of Actuaries or its successors.

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

30 (g) Rules adopted by the commissioner shall define disciplinary  
31 action by the commissioner against the company or the qualified  
32 actuary.

33 **Sec. 86.** RCW 48.74.030 and 1982 1st ex.s. c 9 s 3 are each amended  
34 to read as follows:

35 (1) Except as otherwise provided in subsections (2) and (3) of this  
36 section, or in section 90 of this act, the minimum standard for the  
37 valuation of all such policies and contracts issued prior to July 10,  
38 1982, shall be that provided by the laws in effect immediately prior to

1 such date. Except as otherwise provided in subsections (2) and (3) of  
2 this section, or in section 90 of this act, the minimum standard for  
3 the valuation of all such policies and contracts issued on or after  
4 July 10, 1982, shall be the commissioner's reserve valuation methods  
5 defined in RCW 48.74.040 (~~and~~), 48.74.070, and section 90 of this  
6 act, three and one-half percent interest, or in the case of life  
7 insurance policies and contracts, other than annuity and pure endowment  
8 contracts, issued on or after July 16, 1973, four percent interest for  
9 such policies issued prior to September 1, 1979, five and one-half  
10 percent interest for single premium life insurance policies and four  
11 and one-half percent interest for all other such policies issued on and  
12 after September 1, 1979, and the following tables:

13 (a) For all ordinary policies of life insurance issued on the  
14 standard basis, excluding any disability and accidental death benefits  
15 in such policies--the commissioner's 1941 standard ordinary mortality  
16 table for such policies issued prior to the operative date of RCW  
17 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality  
18 table for such policies issued on or after such operative date and  
19 prior to the operative date of RCW 48.76.050(4), except that for any  
20 category of such policies issued on female risks, all modified net  
21 premiums and present values referred to in this chapter may be  
22 calculated according to an age not more than six years younger than the  
23 actual age of the insured; and for such policies issued on or after the  
24 operative date of RCW 48.76.050(4): (i) The commissioner's 1980  
25 standard ordinary mortality table; or (ii) at the election of the  
26 company for any one or more specified plans of life insurance, the  
27 commissioner's 1980 standard ordinary mortality table with ten-year  
28 select mortality factors; or (iii) any ordinary mortality table,  
29 adopted after 1980 by the National Association of Insurance  
30 Commissioners, that is approved by regulation promulgated by the  
31 commissioner for use in determining the minimum standard of valuation  
32 for such policies.

33 (b) For all industrial life insurance policies issued on the  
34 standard basis, excluding any disability and accidental death benefits  
35 in such policies--the 1941 standard industrial mortality table for such  
36 policies issued prior to the operative date of RCW 48.23.350(5b), and  
37 for such policies issued on or after such operative date the  
38 commissioner's 1961 standard industrial mortality table or any  
39 industrial mortality table, adopted after 1980 by the National



1 Association of Insurance Commissioners, that is approved by rule of the  
2 commissioner for use in determining the minimum standard of valuation  
3 for such policies.

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

9 (d) For group annuity and pure endowment contracts, excluding any  
10 disability and accidental death benefits in such policies--the group  
11 annuity mortality table for 1951, any modification of such table  
12 approved by the commissioner, or, at the option of the company, any of  
13 the tables or modifications of (~~table[s]~~) tables specified for  
14 individual annuity and pure endowment contracts.

15 (e) For total and permanent disability benefits in or supplementary  
16 to ordinary policies or contracts--for policies or contracts issued on  
17 or after January 1, 1966, the tables of period 2 disablement rates and  
18 the 1930 to 1950 termination rates of the 1952 disability study of the  
19 Society of Actuaries, with due regard to the type of benefit or any  
20 tables of disablement rates and termination rates, adopted after 1980  
21 by the National Association of Insurance Commissioners, that are  
22 approved by regulation promulgated by the commissioner for use in  
23 determining the minimum standard of valuation for such policies; for  
24 policies or contracts issued on or after January 1, 1961, and prior to  
25 January 1, 1966, either such tables or, at the option of the company,  
26 the class (3) disability table (1926); and for policies issued prior to  
27 January 1, 1961, the class (3) disability table (1926). Any such table  
28 shall, for active lives, be combined with a mortality table permitted  
29 for calculating the reserves for life insurance policies.

30 (f) For accidental death benefits in or supplementary to policies--  
31 for policies issued on or after January 1, 1966, the 1959 accidental  
32 death benefits table or any accidental death benefits table, adopted  
33 after 1980 by the National Association of Insurance Commissioners, that  
34 is approved by regulation promulgated by the commissioner for use in  
35 determining the minimum standard of valuation for such policies; for  
36 policies issued on or after January 1, 1961, and prior to January 1,  
37 1966, either such table or, at the option of the company, the  
38 intercompany double indemnity mortality table; and for policies issued  
39 prior to January 1, 1961, the intercompany double indemnity mortality

1 table. Either table shall be combined with a mortality table permitted  
2 for calculating the reserves for life insurance policies.

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

6 (2) Except as provided in subsection (3) of this section, the  
7 minimum standard for the valuation of all individual annuity and pure  
8 endowment contracts issued on or after July 10, 1982, and for all  
9 annuities and pure endowments purchased on or after such effective date  
10 under group annuity and pure endowment contracts, shall be the  
11 commissioner's reserve valuation methods defined in RCW 48.74.040 and  
12 the following tables and interest rates:

13 (a) For individual annuity and pure endowment contracts issued  
14 before September 1, 1979, excluding any disability and accidental death  
15 benefit in such contracts--the 1971 individual annuity mortality table,  
16 or any modification of this table approved by the commissioner, and six  
17 percent interest for single premium immediate annuity contracts, and  
18 four percent interest for all other individual annuity and pure  
19 endowment contracts.

20 (b) For individual single premium immediate annuity contracts  
21 issued on or after September 1, 1979, excluding any disability and  
22 accidental death benefits in such contracts--the 1971 individual  
23 annuity mortality table or any individual annuity mortality table,  
24 adopted after 1980 by the National Association of Insurance  
25 Commissioners, that is approved by regulation promulgated by the  
26 commissioner for use in determining the minimum standard of valuation  
27 for such contracts, or any modification of these tables approved by the  
28 commissioner, and seven and one-half percent interest.

29 (c) For individual annuity and pure endowment contracts issued on  
30 or after September 1, 1979, other than single premium immediate annuity  
31 contracts, excluding any disability and accidental death benefits in  
32 such contracts--the 1971 individual annuity mortality table or any  
33 individual annuity mortality table, adopted after 1980 by the National  
34 Association of Insurance Commissioners, that is approved by regulation  
35 promulgated by the commissioner for use in determining the minimum  
36 standard of valuation for such contracts, or any modification of these  
37 tables approved by the commissioner, and five and one-half percent  
38 interest for single premium deferred annuity and pure endowment

1 contracts and four and one-half percent interest for all other such  
2 individual annuity and pure endowment contracts.

3 (d) For all annuities and pure endowments purchased prior to  
4 September 1, 1979, under group annuity and pure endowment contracts,  
5 excluding any disability and accidental death benefits purchased under  
6 such contracts--the 1971 group annuity mortality table, or any  
7 modification of this table approved by the commissioner, and six  
8 percent interest.

9 (e) For all annuities and pure endowments purchased on or after  
10 September 1, 1979, under group annuity and pure endowment contracts,  
11 excluding any disability and accidental death benefits purchased under  
12 such contracts--the 1971 group annuity mortality table or any group  
13 annuity mortality table, adopted after 1980 by the National Association  
14 of Insurance Commissioners, that is approved by regulation promulgated  
15 by the commissioner for use in determining the minimum standard of  
16 valuation for such annuities and pure endowments, or any modification  
17 of these tables approved by the commissioner, and seven and one-half  
18 percent interest.

19 After July 16, 1973, any company may file with the commissioner a  
20 written notice of its election to comply with the provisions of this  
21 section after a specified date before January 1, 1979, which shall be  
22 the operative date of this section for such company(~~(: PROVIDED, That~~  
23 ~~a company may elect a different operative date for individual annuity~~  
24 ~~and pure endowment contracts from that elected for group annuity and~~  
25 ~~pure endowment contracts))). If a company makes no such election, the  
26 operative date of this section for such company shall be January 1,  
27 1979.~~

28 (3)(a) The interest rates used in determining the minimum standard  
29 for the valuation of:

30 (i) All life insurance policies issued in a particular calendar  
31 year, on or after the operative date of RCW 48.76.050(4);

32 (ii) All individual annuity and pure endowment contracts issued in  
33 a particular calendar year on or after January 1, 1982;

34 (iii) All annuities and pure endowments purchased in a particular  
35 calendar year on or after January 1, 1982, under group annuity and pure  
36 endowment contracts; and

37 (iv) The net increase, if any, in a particular calendar year after  
38 January 1, 1982, in amounts held under guaranteed interest contracts

1 shall be the calendar year statutory valuation interest rates as  
2 defined in this section.

3 (b) The calendar year statutory valuation interest rates, I, shall  
4 be determined as follows and the results rounded to the nearer one-  
5 quarter of one percent:

6 (i) For life insurance:

$$7 \quad I = .03 + W \{R - .03\} + W/2 \{R - .09\};$$

8 (ii) For single premium immediate annuities and for annuity  
9 benefits involving life contingencies arising from other annuities with  
10 cash settlement options and from guaranteed interest contracts with  
11 cash settlement options:

$$12 \quad I = .03 + W (R - .03)$$

13 where  $\bar{R}$  is the lesser of R and .09,

14  $\underline{R}$  is the greater of R and .09,

15 R is the reference interest rate defined in this section, and

16 W is the weighting factor defined in this section;

17 (iii) For other annuities with cash settlement options and  
18 guaranteed interest contracts with cash settlement options, valued on  
19 an issue year basis, except as stated in (ii) of this subparagraph, the  
20 formula for life insurance stated in (i) of this subparagraph shall  
21 apply to annuities and guaranteed interest contracts with guarantee  
22 durations in excess of ten years and the formula for single premium  
23 immediate annuities stated in (ii) of this subparagraph shall apply to  
24 annuities and guaranteed interest contracts with guarantee duration of  
25 ten years or less;

26 (iv) For other annuities with no cash settlement options and for  
27 guaranteed interest contracts with no cash settlement options, the  
28 formula for single premium immediate annuities stated in (ii) of this  
29 subparagraph shall apply;

30 (v) For other annuities with cash settlement options and guaranteed  
31 interest contracts with cash settlement options, valued on a change in  
32 fund basis, the formula for single premium immediate annuities stated  
33 in (ii) of this subparagraph shall apply.

34 (c) However, if the calendar year statutory valuation interest rate  
35 for any life insurance policies issued in any calendar year determined  
36 without reference to this sentence differs from the corresponding  
37 actual rate for similar policies issued in the immediately preceding  
38 calendar year by less than one-half of one percent, the calendar year  
39 statutory valuation interest rate for such life insurance policies

1 shall be equal to the corresponding actual rate for the immediately  
2 preceding calendar year. For purposes of applying the immediately  
3 preceding sentence, the calendar year statutory valuation interest rate  
4 for life insurance policies issued in a calendar year shall be  
5 determined for 1983 using the reference interest rate defined for 1982  
6 and shall be determined for each subsequent calendar year regardless of  
7 when RCW 48.76.050(4) becomes operative.

8 (d) The weighting factors referred to in the formulas stated in  
9 subparagraph (b) of this subsection are given in the following tables:

10 (i) Weighting Factors for Life Insurance:

11 Guarantee Duration	Weighting
12 (Years)	Factors
13 10 or less	.50
14 More than 10, but not more than 20	.45
15 More than 20	.35

16 For life insurance, the guarantee duration is the maximum number of  
17 years the life insurance can remain in force on a basis guaranteed in  
18 the policy or under options to convert to plans of life insurance with  
19 premium rates or nonforfeiture values or both which are guaranteed in  
20 the original policy;

21 (ii) Weighting factor for single premium immediate annuities and  
22 for annuity benefits involving life contingencies arising from other  
23 annuities with cash settlement options and guaranteed interest  
24 contracts with cash settlement options: .80;

25 (iii) Weighting factors for other annuities and for guaranteed  
26 interest contracts, except as stated in (ii) of this subparagraph,  
27 shall be as specified in (d)(iii) (A), (B), and (C) of this subsection,  
28 according to the rules and definitions in (d)(iii) (D), (E), and (F) of  
29 this subsection:

30 (A) For annuities and guaranteed interest contracts valued on an  
31 issue year basis:

1 <b>Guarantee Duration</b> 2 3 <b>(Years)</b>	4 <b>Weighting Factor</b> 5 <b>for Plan Type</b>		
	6 <b>A</b>	7 <b>B</b>	8 <b>C</b>
9 5 or less:	10 .80	11 .60	12 .50
13 More than 5, but not more than 10:	14 .75	15 .60	16 .50
17 More than 10, but not more than 20:	18 .65	19 .50	20 .45
21 More than 20:	22 .45	23 .35	24 .35

25 (B) For annuities and guaranteed interest contracts valued on a  
26 change in fund basis, the factors shown in (d)(iii) (A) of this  
27 subsection increased by:

28	29 <b>Plan Type</b>		
	30 <b>A</b>	31 <b>B</b>	32 <b>C</b>
33	34 .15	35 .25	36 .05

37 (C) For annuities and guaranteed interest contracts valued on an  
38 issue year basis other than those with no cash settlement options which  
39 do not guarantee interest on considerations received more than one year  
40 after issue or purchase and for annuities and guaranteed interest  
41 contracts valued on a change in fund basis which do not guarantee  
42 interest rates on considerations received more than twelve months  
43 beyond the valuation date, the factors shown in (d)(iii) (A) of this  
44 subsection or derived in (d)(iii) (B) of this subsection increased by:

45	46 <b>Plan Type</b>		
	47 <b>A</b>	48 <b>B</b>	49 <b>C</b>
50	51 .05	52 .05	53 .05

54 (D) For other annuities with cash settlement options and guaranteed  
55 interest contracts with cash settlement options, the guarantee duration  
56 is the number of years for which the contract guarantees interest rates  
57 in excess of the calendar year statutory valuation interest rate for  
58 life insurance policies with guarantee duration in excess of twenty  
59 years. For other annuities with no cash settlement options and for  
60 guaranteed interest contracts with no cash settlement options, the  
61 guarantee duration is the number of years from the date of issue or  
62 date of purchase to the date annuity benefits are scheduled to commence.

63 (E) Plan type as used in the tables in (d)(iii) (A), (B), and (C)  
64 of this subsection is defined as follows:  
65

1 Plan Type A: At any time a policyholder may withdraw funds only:  
2 (1) With an adjustment to reflect changes in interest rates or asset  
3 values since receipt of the funds by the insurance company; or (2)  
4 without such adjustment but in installments over five years or more; or  
5 (3) as an immediate life annuity; or (4) no withdrawal permitted.

6 Plan Type B: Before expiration of the interest rate guarantee, a  
7 policyholder may withdraw funds only: (1) With adjustment to reflect  
8 changes in interest rates or asset values since receipt of the funds by  
9 the insurance company; or (2) without such adjustment but in  
10 installments over five years or more; or (3) no withdrawal permitted.  
11 At the end of the interest rate guarantee, funds may be withdrawn  
12 without such adjustment in a single sum or installments over less than  
13 five years.

14 Plan Type C: A policyholder may withdraw funds before expiration  
15 of the interest rate guarantee in a single sum or installments over  
16 less than five years either: (1) Without adjustment to reflect changes  
17 in interest rates or asset values since receipt of the funds by the  
18 insurance company; or (2) subject only to a fixed surrender charge  
19 stipulated in the contract as a percentage of the fund.

20 (F) A company may elect to value guaranteed interest contracts with  
21 cash settlement options and annuities with cash settlement options on  
22 either an issue year basis or on a change in fund basis. Guaranteed  
23 interest contracts with no cash settlement options and other annuities  
24 with no cash settlement options must be valued on an issue year basis.  
25 As used in this section, an issue year basis of valuation refers to a  
26 valuation basis under which the interest rate used to determine the  
27 minimum valuation standard for the entire duration of the annuity or  
28 guaranteed interest contract is the calendar year valuation interest  
29 rate for the year of issue or year of purchase of the annuity or  
30 guaranteed interest contract. The change in fund basis of valuation  
31 refers to a valuation basis under which the interest rate used to  
32 determine the minimum valuation standard applicable to each change in  
33 the fund held under the annuity or guaranteed interest contract is the  
34 calendar year valuation interest rate for the year of the change in the  
35 fund.

36 (e) The reference interest rate referred to in subparagraphs (b)  
37 and (c) of this subsection is defined as follows:

38 (i) For all life insurance, the lesser of the average over a period  
39 of thirty-six months and the average over a period of twelve months,

1 ending on June 30th of the calendar year next preceding the year of  
2 issue, of Moody's corporate bond yield average--monthly average  
3 corporates, as published by Moody's Investors Service, Inc.

4 (ii) For single premium immediate annuities and for annuity  
5 benefits involving life contingencies arising from other annuities with  
6 cash settlement options and guaranteed interest contracts with cash  
7 settlement options, the average over a period of twelve months, ending  
8 on June 30th of the calendar year of issue or year of purchase of  
9 Moody's corporate bond yield average--monthly average corporates, as  
10 published by Moody's Investors Service, Inc.

11 (iii) For other annuities with cash settlement options and  
12 guaranteed interest contracts with cash settlement options, valued on  
13 a year of issue basis, except as stated in (ii) of this subparagraph,  
14 with guarantee duration in excess of ten years, the lesser of the  
15 average over a period of thirty-six months and the average over a  
16 period of twelve months, ending on June 30th of the calendar year of  
17 issue or purchase, of Moody's corporate bond yield average--monthly  
18 average corporates, as published by Moody's Investors Service, Inc.

19 (iv) 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 of ten years or less, the average over a period  
23 of twelve months, ending on June 30th of the calendar year of issue or  
24 purchase, of Moody's corporate bond yield average--monthly average  
25 corporates, as published by Moody's Investors Service, Inc.

26 (v) For other annuities with no cash settlement options and for  
27 guaranteed interest contracts with no cash settlement options, the  
28 average over a period of twelve months, ending on June 30th of the  
29 calendar year of issue or purchase, of Moody's corporate bond yield  
30 average--monthly average corporates, as published by Moody's Investors  
31 Service, Inc.

32 (vi) For other annuities with cash settlement options and  
33 guaranteed interest contracts with cash settlement options, valued on  
34 a change in fund basis, except as stated in (ii) of this subparagraph,  
35 the average over a period of twelve months, ending on June 30th of the  
36 calendar year of the change in the fund, of Moody's corporate bond  
37 yield average--monthly average corporates, as published by Moody's  
38 Investors Service, Inc.



1       (~~(g)~~~~{f}~~) (f) If Moody's corporate bond yield average--monthly  
2 average corporates is no longer published by Moody's Investors Service,  
3 Inc., or if the National Association of Insurance Commissioners  
4 determines that Moody's corporate bond yield average--monthly average  
5 corporates as published by Moody's Investors Service, Inc. is no longer  
6 appropriate for the determination of the reference interest rate, then  
7 an alternative method for determination of the reference interest rate,  
8 which is adopted by the National Association of Insurance Commissioners  
9 and approved by rule adopted by the commissioner, may be substituted.

10       **Sec. 87.** RCW 48.74.040 and 1982 1st ex.s. c 9 s 4 are each amended  
11 to read as follows:

12       (1) Except as otherwise provided in RCW 48.74.040(2) (~~and~~),  
13 48.74.070, and section 90 of this act, reserves according to the  
14 commissioner's reserve valuation method, for the life insurance and  
15 endowment benefits of policies providing for a uniform amount of  
16 insurance and requiring the payment of uniform premiums, shall be the  
17 excess, if any, of the present value, at the date of valuation, of such  
18 future guaranteed benefits provided for by such policies, over the then  
19 present value of any future modified net premiums therefor. The  
20 modified net premiums for any such policy shall be such uniform  
21 percentage of the respective contract premiums for such benefits that  
22 the present value, at the date of issue of the policy, of all such  
23 modified net premiums shall be equal to the sum of the then present  
24 value of such benefits provided for by the policy and the excess of (a)  
25 over (b), as follows:

26       (a) A net level annual premium equal to the present value, at the  
27 date of issue, of such benefits provided for after the first policy  
28 year, divided by the present value, at the date of issue, of an annuity  
29 of one per annum payable on the first and each subsequent anniversary  
30 of such policy on which a premium falls due: PROVIDED HOWEVER, That  
31 such net level annual premium shall not exceed the net level annual  
32 premium on the nineteen year premium whole life plan for insurance of  
33 the same amount at an age one year higher than the age at issue of such  
34 policy.

35       (b) A net one year term premium for such benefits provided for in  
36 the first policy year: PROVIDED, That for any life insurance policy  
37 issued on or after January 1, 1986, for which the contract premium in  
38 the first policy year exceeds that of the second year and for which no

1 comparable additional benefit is provided in the first year for such  
2 excess and which provides an endowment benefit or a cash surrender  
3 value or a combination thereof in an amount greater than such excess  
4 premium, the reserve according to the commissioner's reserve valuation  
5 method as of any policy anniversary occurring on or before the assumed  
6 ending date defined herein as the first policy anniversary on which the  
7 sum of any endowment benefit and any cash surrender value then  
8 available is greater than such excess premium shall, except as  
9 otherwise provided in RCW 48.74.070, be the greater of the reserve as  
10 of such policy anniversary calculated as described in the preceding  
11 paragraph of this subsection and the reserve as of such policy  
12 anniversary calculated as described in that paragraph, but with: (i)  
13 The value defined in subparagraph (a) of that paragraph being reduced  
14 by fifteen percent of the amount of such excess first year premium;  
15 (ii) all present values of benefits and premiums being determined  
16 without reference to premiums or benefits provided for by the policy  
17 after the assumed ending date; (iii) the policy being assumed to mature  
18 on such date as an endowment; and (iv) the cash surrender value  
19 provided on such date being considered as an endowment benefit. In  
20 making the above comparison the mortality and interest bases stated in  
21 RCW 48.74.030(1) and (3) shall be used.

22 Reserves according to the commissioner's reserve valuation method  
23 for life insurance policies providing for a varying amount of insurance  
24 or requiring the payment of varying premiums, group annuity and pure  
25 endowment contracts purchased under a retirement plan or plan of  
26 deferred compensation established or maintained by an employer,  
27 including a partnership or sole proprietorship, or by an employee  
28 organization, or by both, other than a plan providing individual  
29 retirement accounts or individual retirement annuities under section  
30 408 of the Internal Revenue Code, as now or hereafter amended,  
31 disability and accidental death benefits in all policies and contracts,  
32 and all other benefits, except life insurance and endowment benefits in  
33 life insurance policies and benefits provided by all other annuity and  
34 pure endowment contracts, shall be calculated by a method consistent  
35 with the principles of the preceding paragraphs of this subsection.

36 (2) This section shall apply to all annuity and pure endowment  
37 contracts other than group annuity and pure endowment contracts  
38 purchased under a retirement plan or plan of deferred compensation,  
39 established or maintained by an employer, including a partnership or

1 sole proprietorship, or by an employee organization, or by both, other  
2 than a plan providing individual retirement accounts or individual  
3 retirement annuities under section 408 of the Internal Revenue Code, as  
4 now or hereafter amended.

5 Reserves according to the commissioner's annuity reserve method for  
6 benefits under annuity or pure endowment contracts, excluding any  
7 disability and accidental death benefits in such contracts, shall be  
8 the greatest of the respective excesses of the present values, at the  
9 date of valuation, of the future guaranteed benefits, including  
10 guaranteed nonforfeiture benefits, provided for by such contracts at  
11 the end of each respective contract year, over the present value, at  
12 the date of valuation, of any future valuation considerations derived  
13 from future gross considerations, required by the terms of such  
14 contract, that become payable prior to the end of such respective  
15 contract year. The future guaranteed benefits shall be determined by  
16 using the mortality table, if any, and the interest rate, or rates,  
17 specified in such contracts for determining guaranteed benefits. The  
18 valuation considerations are the portions of the respective gross  
19 considerations applied under the terms of such contracts to determine  
20 nonforfeiture values.

21 **Sec. 88.** RCW 48.74.050 and 1982 1st ex.s. c 9 s 5 are each amended  
22 to read as follows:

23 (1) In no event may a company's aggregate reserves for all life  
24 insurance policies, excluding disability and accidental death benefits,  
25 issued on or after July 10, 1982, be less than the aggregate reserves  
26 calculated in accordance with the methods set forth in RCW 48.74.040,  
27 48.74.070, and 48.74.080 and the mortality table or tables and rate or  
28 rates of interest used in calculating nonforfeiture benefits for such  
29 policies.

30 (2) In no event may the aggregate reserves for all policies,  
31 contracts, and benefits be less than the aggregate reserves determined  
32 by the qualified actuary to be necessary to render the opinion required  
33 under section 85 of this act.

34 **Sec. 89.** RCW 48.74.060 and 1982 1st ex.s. c 9 s 6 are each amended  
35 to read as follows:

36 Reserves for all policies and contracts issued prior to the  
37 operative date of this chapter, may be calculated, at the option of the

1 company, according to any standards which produce greater aggregate  
2 reserves for all such policies and contracts than the minimum reserves  
3 required by the laws in effect immediately prior to such date.

4 Reserves for any category of policies, contracts, or benefits as  
5 established by the commissioner, issued on or after July 10, 1982, may  
6 be calculated, at the option of the company, according to any standards  
7 which produce greater aggregate reserves for such category than those  
8 calculated according to the minimum standard herein provided, but the  
9 rate or rates of interest used for policies and contracts, other than  
10 annuity and pure endowment contracts, shall not be higher than the  
11 corresponding rate or rates of interest used in calculating any  
12 nonforfeiture benefits provided therein.

13 Any such company which at any time has adopted any standard of  
14 valuation producing greater aggregate reserves than those calculated  
15 according to the minimum standard herein provided may, with the  
16 approval of the commissioner, adopt any lower standard of valuation,  
17 but not lower than the minimum herein provided. For the purposes of  
18 this section, the holding of additional reserves previously determined  
19 by a qualified actuary to be necessary to render the opinion required  
20 under section 85 of this act is not to be the adoption of a higher  
21 standard of valuation.

22 NEW SECTION. Sec. 90. A new section is added to chapter 48.74 RCW  
23 to read as follows:

24 The commissioner shall adopt rules containing the minimum standards  
25 applicable to the valuation of disability insurance.

26 **Sec. 91.** RCW 48.92.010 and 1987 c 306 s 1 are each amended to read  
27 as follows:

28 The purpose of this chapter is to regulate the formation and  
29 operation of risk retention groups and purchasing groups in this state  
30 formed pursuant to the provisions of the federal Liability Risk  
31 Retention Act of 1986.

32 **Sec. 92.** RCW 48.92.020 and 1987 c 306 s 2 are each amended to read  
33 as follows:

34 As used in this chapter, the following terms have the meanings  
35 indicated unless the context clearly requires otherwise:

1 (1) "Commissioner" means the insurance commissioner of Washington  
2 state or the commissioner, director, or superintendent of insurance in  
3 any other state.

4 (2) "Completed operations liability" means liability arising out of  
5 the installation, maintenance, or repair of any product at a site which  
6 is not owned or controlled by:

7 (a) Any person who performs that work; or

8 (b) Any person who hires an independent contractor to perform that  
9 work; but shall include liability for activities which are completed or  
10 abandoned before the date of the occurrence giving rise to the  
11 liability.

12 (3) "Domicile," for purposes of determining the state in which a  
13 purchasing group is domiciled, means:

14 (a) For a corporation, the state in which the purchasing group is  
15 incorporated; and

16 (b) For an unincorporated entity, the state of its principal place  
17 of business.

18 (4) "Hazardous financial condition" means that, based on its  
19 present or reasonably anticipated financial condition, a risk retention  
20 group, although not yet financially impaired or insolvent, is unlikely  
21 to be able:

22 (a) To meet obligations to policyholders with respect to known  
23 claims and reasonably anticipated claims; or

24 (b) To pay other obligations in the normal course of business.

25 (5) "Insurance" means primary insurance, excess insurance,  
26 reinsurance, surplus lines insurance, and any other arrangement for  
27 shifting and distributing risk which is determined to be insurance  
28 under the laws of this state.

29 (6) "Liability" means legal liability for damages including costs  
30 of defense, legal costs and fees, and other claims expenses because of  
31 injuries to other persons, damage to their property, or other damage or  
32 loss to such other persons resulting from or arising out of:

33 (a) Any business, whether profit or nonprofit, trade, product,  
34 services, including professional services, premises, or operations; or

35 (b) Any activity of any state or local government, or any agency or  
36 political subdivision thereof.

37 "Liability" does not include personal risk liability and an  
38 employer's liability with respect to its employees other than legal

1 liability under the federal Employers' Liability Act 45 U.S.C. 51 et  
2 seq.

3 (7) "Personal risk liability" means liability for damages because  
4 of injury to any person, damage to property, or other loss or damage  
5 resulting from any personal, familial, or household responsibilities or  
6 activities, rather than from responsibilities or activities referred to  
7 in subsection (6) of this section.

8 (8) "Plan of operation or a feasibility study" means an analysis  
9 which presents the expected activities and results of a risk retention  
10 group including, at a minimum:

11 (a) Information sufficient to verify that its members are engaged  
12 in businesses or activities similar or related with respect to the  
13 liability to which the members are exposed by virtue of any related,  
14 similar, or common business, trade, product, services, premises, or  
15 operations;

16 (b) For each state in which it intends to operate, the coverages,  
17 deductibles, coverage limits, rates, and rating classification systems  
18 for each line of insurance the group intends to offer;

19 ~~((b))~~ (c) Historical and expected loss experience of the proposed  
20 members and national experience of similar exposures;

21 ~~((e))~~ (d) Pro forma financial statements and projections;

22 ~~((d))~~ (e) Appropriate opinions by a qualified, independent,  
23 casualty actuary, including a determination of minimum premium or  
24 participation levels required to commence operations and to prevent a  
25 hazardous financial condition;

26 ~~((e))~~ (f) Identification of management, underwriting and claims  
27 procedures, marketing methods, managerial oversight methods, ((and))  
28 investment policies, and reinsurance agreements; ((and

29 ~~((f))~~ (g) Identification of each state in which the risk retention  
30 group has obtained, or sought to obtain, a charter and license, and a  
31 description of its status in each of those states; and

32 (h) Such other matters as may be prescribed by the commissioner for  
33 liability insurance companies authorized by the insurance laws of the  
34 state.

35 (9) "Product liability" means liability for damages because of any  
36 personal injury, death, emotional harm, consequential economic damage,  
37 or property damage including damages resulting from the loss of use of  
38 property arising out of the manufacture, design, importation,  
39 distribution, packaging, labeling, lease, or sale of a product, but

1 does not include the liability of any person for those damages if the  
2 product involved was in the possession of such a person when the  
3 incident giving rise to the claim occurred.

4 (10) "Purchasing group" means any group which:

5 (a) Has as one of its purposes the purchase of liability insurance  
6 on a group basis;

7 (b) Purchases the insurance only for its group members and only to  
8 cover their similar or related liability exposure, as described in (c)  
9 of this subsection;

10 (c) Is composed of members whose businesses or activities are  
11 similar or related with respect to the liability to which members are  
12 exposed by virtue of any related, similar, or common business, trade,  
13 product, services, premises, or operations; and

14 (d) Is domiciled in any state.

15 (11) "Risk retention group" means any corporation or other limited  
16 liability association (~~((formed under the laws of any state, Bermuda, or  
17 the Cayman Islands))~~):

18 (a) Whose primary activity consists of assuming and spreading all,  
19 or any portion, of the liability exposure of its group members;

20 (b) Which is organized for the primary purpose of conducting the  
21 activity described under (a) of this subsection;

22 (c) Which:

23 (i) Is chartered and licensed as a liability insurance company and  
24 authorized to engage in the business of insurance under the laws of any  
25 state; or

26 (ii) Before January 1, 1985, was chartered or licensed and  
27 authorized to engage in the business of insurance under the laws of  
28 Bermuda or the Cayman Islands and, before such date, had certified to  
29 the insurance commissioner of at least one state that it satisfied the  
30 capitalization requirements of such state, except that any such group  
31 shall be considered to be a risk retention group only if it has been  
32 engaged in business continuously since that date and only for the  
33 purpose of continuing to provide insurance to cover product liability  
34 or completed operations liability as the terms were defined in the  
35 federal Product Liability Risk Retention Act of 1981 before the date of  
36 the enactment of the federal Risk Retention Act of 1986;

37 (d) Which does not exclude any person from membership in the group  
38 solely to provide for members of such a group a competitive advantage  
39 over such a person;

1 (e) Which:

2 (i) Has as its ~~((members))~~ owners only persons who ~~((have an~~  
3 ~~ownership interest in the group and which has as its owners only~~  
4 ~~persons who are members))~~ comprise the membership of the risk retention  
5 group and who are provided insurance by the risk retention group; or

6 (ii) Has as its sole ~~((member and sole))~~ owner an organization  
7 ~~((which is owned by persons who are provided insurance by the risk~~  
8 ~~retention group))~~ that has:

9 (A) As its members only persons who comprise the membership of the  
10 risk retention group; and

11 (B) As its owners only persons who comprise the membership of the  
12 risk retention group and who are provided insurance by the group;

13 (f) Whose members are engaged in businesses or activities similar  
14 or related with respect to the liability of which such members are  
15 exposed by virtue of any related, similar, or common business trade,  
16 product, services, premises, or operations;

17 (g) Whose activities do not include the provision of insurance  
18 other than:

19 (i) Liability insurance for assuming and spreading all or any  
20 portion of the liability of its group members; and

21 (ii) Reinsurance with respect to the liability of any other risk  
22 retention group or any members of such other group which is engaged in  
23 businesses or activities so that the group or member meets the  
24 requirement described in (f) of this subsection from membership in the  
25 risk retention group which provides such reinsurance; and

26 (h) The name of which includes the phrase "risk retention group."

27 (12) "State" means any state of the United States or the District  
28 of Columbia.

29 **Sec. 93.** RCW 48.92.030 and 1987 c 306 s 3 are each amended to read  
30 as follows:

31 (1) A risk retention group seeking to be chartered in this state  
32 must be chartered and licensed as a liability insurance company  
33 authorized by the insurance laws of this state and, except as provided  
34 elsewhere in this chapter, must comply with all of the laws, rules,  
35 regulations, and requirements applicable to the insurers chartered and  
36 licensed in this state and with RCW 48.92.040 to the extent the  
37 requirements are not a limitation on laws, rules, regulations, or  
38 requirements of this state.



1       (2) A risk retention group chartered in this state shall file with  
2 the department and the National Association of Insurance Commissioners  
3 an annual statement in a form prescribed by the National Association of  
4 Insurance Commissioners, and in electronic form if required by the  
5 commissioner, and completed in accordance with its instructions and the  
6 National Association of Insurance Commissioners accounting practices  
7 and procedures manual.

8       (3) Before it may offer insurance in any state, each domestic risk  
9 retention group shall also submit for approval to the insurance  
10 commissioner of this state a plan of operation or a feasibility study  
11 ((and revisions of the plan or study if the group intends to offer any  
12 additional lines of liability insurance)). The risk retention group  
13 shall submit an appropriate revision in the event of a subsequent  
14 material change in an item of the plan of operation or feasibility  
15 study, within ten days of the change. The group may not offer any  
16 additional kinds of liability insurance, in this state or in any other  
17 state, until a revision of the plan or study is approved by the  
18 commissioner.

19       (4) At the time of filing its application for charter, the risk  
20 retention group shall provide to the commissioner in summary form the  
21 following information: The identity of the initial members of the  
22 group; the identify of those individuals who organized the group or who  
23 will provide administrative services or otherwise influence or control  
24 the activities of the group; the amount and nature of the initial  
25 capitalization; the coverages to be afforded; and the states in which  
26 the group intends to operate. Upon receipt of this information, the  
27 commissioner shall forward the information to the National Association  
28 of Insurance Commissioners. Providing notification to the National  
29 Association of Insurance Commissioners is in addition to and is not  
30 sufficient to satisfy the requirements of RCW 48.92.040 or this  
31 chapter.

32       **Sec. 94.** RCW 48.92.040 and 1987 c 306 s 4 are each amended to read  
33 as follows:

34       Risk retention groups chartered and licensed in states other than  
35 this state and seeking to do business as a risk retention group in this  
36 state ~~((must observe and abide by))~~ shall comply with the laws of this  
37 state as follows:

1 (1) Before offering insurance in this state, a risk retention group  
2 shall submit to the commissioner on a form prescribed by the National  
3 Association of Insurance Commissioners:

4 (a) A statement identifying the state or states in which the risk  
5 retention group is chartered and licensed as a liability insurance  
6 company, date of chartering, its principal place of business, and any  
7 other information including information on its membership, as the  
8 commissioner of this state may require to verify that the risk  
9 retention group is qualified under RCW 48.92.020(11);

10 (b) A copy of its plan of operations or a feasibility study and  
11 revisions of the plan or study submitted to its state of domicile:  
12 PROVIDED, HOWEVER, That the provision relating to the submission of a  
13 plan of operation or a feasibility study shall not apply with respect  
14 to any line or classification of liability insurance which: (i) Was  
15 defined in the federal Product Liability Risk Retention Act of 1981  
16 before October 27, 1986; and (ii) was offered before that date by any  
17 risk retention group which had been chartered and operating for not  
18 less than three years before that date; ((and))

19 (c) The risk retention group shall submit a copy of any revision to  
20 its plan of operation or feasibility study required under RCW  
21 48.92.030(3) at the same time that the revision is submitted to the  
22 commissioner of its chartering state; and

23 (d) A statement of registration which designates the commissioner  
24 as its agent for the purpose of receiving service of legal documents or  
25 process.

26 (2) Any risk retention group doing business in this state shall  
27 submit to the commissioner:

28 (a) A copy of the group's financial statement submitted to its  
29 state of domicile, which shall be certified by an independent public  
30 accountant and contain a statement of opinion on loss and loss  
31 adjustment expense reserves made by a member of the American academy of  
32 actuaries or a qualified loss reserve specialist under criteria  
33 established by the National Association of Insurance Commissioners;

34 (b) A copy of each examination of the risk retention group as  
35 certified by the commissioner or public official conducting the  
36 examination;

37 (c) Upon request by the commissioner, a copy of any information or  
38 document pertaining to an outside audit performed with respect to the  
39 risk retention group; and

1 (d) Any information as may be required to verify its continuing  
2 qualification as a risk retention group under RCW 48.92.020(11).

3 ~~(3)(a) ((All premiums paid for coverages within this state to risk~~  
4 ~~retention groups shall be subject to taxation at the same rate and~~  
5 ~~subject to the same interest, fines, and penalties for nonpayment as~~  
6 ~~that applicable to foreign admitted insurers))~~ A risk retention group  
7 is liable for the payment of premium taxes and taxes on premiums of  
8 direct business for risks resident or located within this state, and  
9 shall report on or before March 1st of each year to the commissioner  
10 the direct premiums written for risks resident or located within this  
11 state. The risk retention group is subject to taxation, and applicable  
12 fines and penalties related thereto, on the same basis as a foreign  
13 admitted insurer.

14 (b) To the extent agents or brokers are utilized under RCW  
15 48.92.120 or otherwise, they shall report ((and pay the taxes for the  
16 premiums for risks which they)) to the commissioner the premiums for  
17 direct business for risks resident or located within this state that  
18 the licensees have placed with or on behalf of a risk retention group  
19 not chartered in this state.

20 (c) To the extent agents or brokers are ~~((not utilized or fail to~~  
21 ~~pay the tax, each risk retention group shall pay the tax for risks~~  
22 ~~insured within the state. Each risk retention group shall report all~~  
23 ~~premiums paid to it for risks insured within the state))~~ used under RCW  
24 48.92.120 or otherwise, an agent or broker shall keep a complete and  
25 separate record of all policies procured from each risk retention  
26 group. The record is open to examination by the commissioner, as  
27 provided in chapter 48.03 RCW. These records must include, for each  
28 policy and each kind of insurance provided thereunder, the following:

29 (i) The limit of liability;

30 (ii) The time period covered;

31 (iii) The effective date;

32 (iv) The name of the risk retention group that issued the policy;

33 (v) The gross premium charged; and

34 (vi) The amount of return premiums, if any.

35 (4) Any risk retention group, its agents and representatives, shall  
36 be subject to any and all unfair claims settlement practices statutes  
37 and regulations specifically denominated by the commissioner as unfair  
38 claims settlement practices regulations.

1 (5) Any risk retention group, its agents and representatives, shall  
2 be subject to the provisions of chapter 48.30 RCW pertaining to  
3 deceptive, false, or fraudulent acts or practices. However, if the  
4 commissioner seeks an injunction regarding such conduct, the injunction  
5 must be obtained from a court of competent jurisdiction.

6 (6) Any risk retention group must submit to an examination by the  
7 commissioner to determine its financial condition if the commissioner  
8 of the jurisdiction in which the group is chartered has not initiated  
9 an examination or does not initiate an examination within sixty days  
10 after a request by the commissioner of this state. The examination  
11 shall be coordinated to avoid unjustified repetition and conducted in  
12 an expeditious manner and in accordance with the National Association  
13 of Insurance Commissioners' examiner handbook.

14 (7) ~~((Any))~~ Every application form for insurance from a risk  
15 retention group and every policy issued by a risk retention group shall  
16 contain in ten-point type on the front page and the declaration page,  
17 the following notice:

18 NOTICE

19 This policy is issued by your risk retention group. Your risk  
20 retention group may not be subject to all of the insurance laws  
21 and regulations of your state. State insurance insolvency  
22 guaranty funds are not available for your risk retention group.

23 (8) The following acts by a risk retention group are hereby  
24 prohibited:

25 (a) The solicitation or sale of insurance by a risk retention group  
26 to any person who is not eligible for membership in that group; and

27 (b) The solicitation or sale of insurance by, or operation of, a  
28 risk retention group that is in a hazardous financial condition or is  
29 financially impaired.

30 (9) No risk retention group shall be allowed to do business in this  
31 state if an insurance company is directly or indirectly a member or  
32 owner of the risk retention group, other than in the case of a risk  
33 retention group all of whose members are insurance companies.

34 ~~((No risk retention group may offer insurance policy coverage~~  
35 ~~prohibited by Title 48 RCW or declared unlawful by the highest court of~~  
36 ~~this state))~~ The terms of an insurance policy issued by a risk  
37 retention group may not provide, or be construed to provide, coverage

1 prohibited generally by statute of this state or declared unlawful by  
2 the highest court of this state.

3 (11) A risk retention group not chartered in this state and doing  
4 business in this state shall comply with a lawful order issued in a  
5 voluntary dissolution proceeding or in a delinquency proceeding  
6 commenced by a state insurance commissioner if there has been a finding  
7 of financial impairment after an examination under ~~((RCW 48.92.040(6))~~  
8 subsection (6) of this section.

9 **Sec. 95.** RCW 48.92.050 and 1987 c 306 s 5 are each amended to read  
10 as follows:

11 (1) No risk retention group shall be permitted to join or  
12 contribute financially to any insurance insolvency guaranty fund, or  
13 similar mechanism, in this state, nor shall any risk retention group,  
14 or its insureds or claimants against its insureds, receive any benefit  
15 from any such fund for claims arising ~~((out of the operations of the))~~  
16 under the insurance policies issued by a risk retention group.

17 (2) A risk retention group shall participate in this state's joint  
18 underwriting associations and mandatory liability pools or plans  
19 required by the commissioners.

20 (3) When a purchasing group obtains insurance covering its members'  
21 risks from an insurer not authorized in this state or a risk retention  
22 group, no such risks, wherever resident or located, are covered by an  
23 insurance guaranty fund or similar mechanism in this state.

24 (4) When a purchasing group obtains insurance covering its members'  
25 risks from an authorized insurer, only risks resident or located in  
26 this state are covered by the state guaranty fund established in  
27 chapter 48.32 RCW.

28 **Sec. 96.** RCW 48.92.070 and 1987 c 306 s 7 are each amended to read  
29 as follows:

30 ~~((Any purchasing group meeting the criteria established under the~~  
31 ~~provisions of the federal Liability Risk Retention Act of 1986 shall be~~  
32 ~~exempt from any law of this state relating to the creation of groups~~  
33 ~~for the purchase of insurance, prohibition of group purchasing, or any~~  
34 ~~law that would discriminate against a purchasing group or its members.~~  
35 ~~In addition, an insurer shall be exempt from any law of this state~~  
36 ~~which prohibits providing, or offering to provide, to a purchasing~~  
37 ~~group or its members advantages based on their loss and expense~~

1 ~~experience not afforded to other persons with respect to rates, policy~~  
2 ~~forms, coverages, or other matters. A purchasing group shall be~~  
3 ~~subject to all other applicable laws of this state.)~~ A purchasing  
4 group and its insurer or insurers are subject to all applicable laws of  
5 this state, except that a purchasing group and its insurer or insurers  
6 are exempt, in regard to liability insurance for the purchasing group,  
7 from any law that:

8 (1) Prohibits the establishment of a purchasing group;

9 (2) Makes it unlawful for an insurer to provide or offer to provide  
10 insurance on a basis providing, to a purchasing group or its members,  
11 advantages based on their loss and expense experience not afforded to  
12 other persons with respect to rates, policy forms, coverages, or other  
13 matters;

14 (3) Prohibits a purchasing group or its members from purchasing  
15 insurance on a group basis described in subsection (2) of this section;

16 (4) Prohibits a purchasing group from obtaining insurance on a  
17 group basis because the group has not been in existence for a minimum  
18 period of time or because any member has not belonged to the group for  
19 a minimum period of time;

20 (5) Requires that a purchasing group must have a minimum number of  
21 members, common ownership or affiliation, or certain legal form;

22 (6) Requires that a certain percentage of a purchasing group must  
23 obtain insurance on a group basis;

24 (7) Otherwise discriminates against a purchasing group or any of  
25 its members.

26 **Sec. 97.** RCW 48.92.080 and 1987 c 306 s 8 are each amended to read  
27 as follows:

28 (1) A purchasing group which intends to do business in this state  
29 shall furnish, before doing business, notice to the commissioner, on  
30 forms prescribed by the National Association of Insurance Commissioners  
31 which shall:

32 (a) Identify the state in which the group is domiciled;

33 (b) Identify all other states in which the group intends to do  
34 business;

35 (c) Specify the lines and classifications of liability insurance  
36 which the purchasing group intends to purchase;

1       ~~((e))~~ (d) Identify the insurance company or companies from which  
2 the group intends to purchase its insurance and the domicile of that  
3 company or companies;

4       ~~((d))~~ (e) Specify the method by which, and the person or persons,  
5 if any, through whom insurance will be offered to its members whose  
6 risks are resident or located in this state;

7       (f) Identify the principal place of business of the group; and

8       ~~((e))~~ (g) Provide any other information as may be required by the  
9 commissioner to verify that the purchasing group is qualified under RCW  
10 48.92.020(10).

11       (2) A purchasing group shall, within ten days, notify the  
12 commissioner of any changes in any of the items set forth in subsection  
13 (1) of this section.

14       (3) The purchasing group shall register with and designate the  
15 commissioner as its agent solely for the purpose of receiving service  
16 of legal documents or process, except that this requirement shall not  
17 apply in the case of a purchasing group that only purchases insurance  
18 that was authorized under the federal Product Liability Risk Retention  
19 Act of 1981 and:

20       (a) Which in any state of the United States:

21       (i) Was domiciled before April ~~((2))~~ 1, 1986; and

22       (ii) Is domiciled on and after October 27, 1986~~((, in any state of~~  
23 ~~the United States))~~);

24       (b) Which:

25       (i) Before October 27, 1986, purchased insurance from an insurance  
26 carrier licensed in any state;

27       (ii) Since October 27, 1986, purchased its insurance from an  
28 insurance carrier licensed in any state; or

29       (c) Which was a purchasing group under the requirements of the  
30 federal Product Liability Risk Retention Act of 1981 before October 27,  
31 1986~~((; and~~

32       ~~(d) Which does not purchase insurance that was not authorized for~~  
33 ~~purposes of an exemption under that act, as in effect before October~~  
34 ~~27, 1986)).~~

35       (4) A purchasing group that is required to give notice under  
36 subsection (1) of this section shall also furnish such information as  
37 may be required by the commissioner to:

38       (a) Verify that the entity qualifies as a purchasing group;

39       (b) Determine where the purchasing group is located; and

1        (c) Determine appropriate tax treatment.

2        **Sec. 98.** RCW 48.92.090 and 1987 c 306 s 9 are each amended to read  
3 as follows:

4        (1) A purchasing group may not purchase insurance from a risk  
5 retention group that is not chartered in a state or from an insurer not  
6 admitted in the state in which the purchasing group is located, unless  
7 the purchase is effected through a licensed agent or broker acting  
8 pursuant to the surplus lines laws and regulations of that state.

9        (2) A purchasing group that obtains liability insurance from an  
10 insurer not admitted in this state or a risk retention group shall  
11 inform each of the members of the group that have a risk resident or  
12 located in this state that the risk is not protected by an insurance  
13 insolvency guaranty fund in this state, and that the risk retention  
14 group or insurer may not be subject to all insurance laws and rules of  
15 this state.

16        (3) No purchasing group may purchase insurance providing for a  
17 deductible or self-insured retention applicable to the group as a  
18 whole; however, coverage may provide for a deductible or self-insured  
19 retention applicable to individual members.

20        (4) Purchases of insurance by purchasing groups are subject to the  
21 same standards regarding aggregate limits that are applicable to all  
22 purchases of group insurance.

23        **NEW SECTION. Sec. 99.** A new section is added to chapter 48.92 RCW  
24 to read as follows:

25        Premium taxes and taxes on premiums paid for coverage of risks  
26 resident or located in this state by a purchasing group or any members  
27 of the purchasing groups must be:

28        (1) Imposed at the same rate and subject to the same interest,  
29 fines, and penalties as those applicable to premium taxes and taxes on  
30 premiums paid for similar coverage from authorized insurers, as defined  
31 under chapter 48.05 RCW, or unauthorized insurers, as defined and  
32 provided for under chapter 48.15 RCW, by other insurers; and

33        (2) The obligation of the insurer; and if not paid by the insurer,  
34 then the obligation of the purchasing group; and if not paid by the  
35 purchasing group, then the obligation of the agent or broker for the  
36 purchasing group; and if not paid by the agent or broker for the  
37 purchasing group, then the obligation of each of the purchasing group's



1 members. The liability of each member of the purchasing group is  
2 several, not joint, and is limited to the tax due in relation to the  
3 premiums paid by that member.

4 **Sec. 100.** RCW 48.92.100 and 1987 c 306 s 10 are each amended to  
5 read as follows:

6 The commissioner is authorized to make use of any of the powers  
7 established under Title 48 RCW to enforce the laws of this state so  
8 long as those powers are not specifically preempted by the federal  
9 Product Liability Risk Retention Act of 1981, as amended by the federal  
10 Risk Retention Amendments of 1986. This includes, but is not limited  
11 to, the commissioner's administrative authority to investigate, issue  
12 subpoenas, conduct depositions and hearings, issue orders, ((and))  
13 impose penalties, and seek injunctive relief. With regard to any  
14 investigation, administrative proceedings, or litigation, the  
15 commissioner can rely on the procedural law and regulations of the  
16 state. The injunctive authority of the commissioner in regard to risk  
17 retention groups is restricted by the requirement that any injunction  
18 be issued by a court of competent jurisdiction.

19 **Sec. 101.** RCW 48.92.120 and 1987 c 306 s 12 are each amended to  
20 read as follows:

21 ~~((Any person acting, or offering to act, as an agent or broker for  
22 a risk retention group or purchasing group, which solicits members,  
23 sells insurance coverage, purchases coverage for its members located  
24 within the state or otherwise does business in this state shall be  
25 subject to the provisions of chapter 48.17 RCW and before commencing  
26 any such activity, obtain a license and pay the fees designated for the  
27 license under RCW 48.14.010.))~~ (1) No person may act or aid in any  
28 manner in soliciting, negotiating, or procuring liability insurance in  
29 this state from a risk retention group unless the person is licensed as  
30 an insurance agent or broker for casualty insurance in accordance with  
31 chapter 48.17 RCW and pays the fees designated for the license under  
32 RCW 48.14.010.

33 (2)(a) No person may act or aid in any manner in soliciting,  
34 negotiating, or procuring liability insurance in this state for a  
35 purchasing group from an authorized insurer or a risk retention group  
36 chartered in a state unless the person is licensed as an insurance

1 agent or broker for casualty insurance in accordance with chapter 48.17  
2 RCW and pays the fees designated for the license under RCW 48.14.010.

3 (b) No person may act or aid in any manner in soliciting,  
4 negotiating, or procuring liability insurance coverage in this state  
5 for a member of a purchasing group under a purchasing group's policy  
6 unless the person is licensed as an insurance agent or broker for  
7 casualty insurance in accordance with chapter 48.17 RCW and pays the  
8 fees designated for the license under RCW 48.14.010.

9 (c) No person may act or aid in any manner in soliciting,  
10 negotiating, or procuring liability insurance from an insurer not  
11 authorized to do business in this state on behalf of a purchasing group  
12 located in this state unless the person is licensed as a surplus lines  
13 broker in accordance with chapter 48.15 RCW and pays the fees  
14 designated for the license under RCW 48.14.010.

15 (3) For purposes of acting as an agent or broker for a risk  
16 retention group or purchasing group under subsections (1) and (2) of  
17 this section, the requirement of residence in this state does not  
18 apply.

19 (4) Every person licensed under chapters 48.15 and 48.17 RCW, on  
20 business placed with risk retention groups or written through a  
21 purchasing group, shall inform each prospective insured of the  
22 provisions of the notice required under RCW 48.92.040(7) in the case of  
23 a risk retention group and RCW 48.92.090(3) in the case of a purchasing  
24 group.

25 **Sec. 102.** RCW 48.92.130 and 1987 c 306 s 13 are each amended to  
26 read as follows:

27 An order issued by any district court of the United States  
28 enjoining a risk retention group from soliciting or selling insurance,  
29 or operating, in any state or in all states or in any territory or  
30 possession of the United States, upon a finding that the group is in a  
31 hazardous financial or financially impaired condition, shall be  
32 enforceable in the courts of the state.

33 **Sec. 103.** RCW 48.92.140 and 1987 c 306 s 14 are each amended to  
34 read as follows:

35 The commissioner may establish and from time to time amend the  
36 rules relating to risk retention or purchasing groups as may be  
37 necessary or desirable to carry out the provisions of this chapter.

1        NEW SECTION.    **Sec. 104.**    A new section is added to chapter 48.01  
2    RCW to read as follows:

3        The activities and operations of mental health regional support  
4    networks, to the extent they pertain to the operation of a medical  
5    assistance managed care system in accordance with chapters 71.24 and  
6    74.09 RCW, are exempt from the requirements of this title.

7        NEW SECTION.    **Sec. 105.**    The following acts or parts of acts are  
8    each repealed:

9        (1) RCW 48.07.090 and 1975 1st ex.s. c 266 s 4, 1953 c 197 s 3, &  
10    1947 c 79 s .07.09;

11        (2) RCW 48.31A.005 and 1983 c 46 s 1;

12        (3) RCW 48.31A.010 and 1971 ex.s. c 13 s 3;

13        (4) RCW 48.31A.020 and 1985 c 55 s 1, 1983 c 46 s 2, & 1971 ex.s.  
14    c 13 s 4;

15        (5) RCW 48.31A.030 and 1983 c 46 s 3 & 1971 ex.s. c 13 s 5;

16        (6) RCW 48.31A.040 and 1971 ex.s. c 13 s 6;

17        (7) RCW 48.31A.050 and 1985 c 55 s 2, 1983 c 46 s 4, & 1971 ex.s.  
18    c 13 s 7;

19        (8) RCW 48.31A.055 and 1985 c 55 s 3;

20        (9) RCW 48.31A.060 and 1971 ex.s. c 13 s 8;

21        (10) RCW 48.31A.070 and 1971 ex.s. c 13 s 9;

22        (11) RCW 48.31A.080 and 1971 ex.s. c 13 s 10;

23        (12) RCW 48.31A.090 and 1971 ex.s. c 13 s 11;

24        (13) RCW 48.31A.100 and 1971 ex.s. c 13 s 12;

25        (14) RCW 48.31A.110 and 1971 ex.s. c 13 s 13;

26        (15) RCW 48.31A.120 and 1971 ex.s. c 13 s 14;

27        (16) RCW 48.31A.130 and 1971 ex.s. c 13 s 15; and

28        (17) RCW 48.31A.900 and 1971 ex.s. c 13 s 17.

29        NEW SECTION.    **Sec. 106.**    The insurance commissioner may take such  
30    steps as are necessary to ensure that this act is implemented on its  
31    effective date.

32        NEW SECTION.    **Sec. 107.**    Sections 1 through 15 of this act shall  
33    constitute a new chapter in Title 48 RCW.

34        NEW SECTION.    **Sec. 108.**    Sections 16 through 21 of this act shall  
35    constitute a new chapter in Title 48 RCW.

1        NEW SECTION.    **Sec. 109.**    Sections 22 through 33 of this act shall  
2    constitute a new chapter in Title 48 RCW.

3        NEW SECTION.    **Sec. 110.**    Sections 34 through 42 of this act shall  
4    constitute a new chapter in Title 48 RCW.

5        NEW SECTION.    **Sec. 111.**    Sections 58 through 74 of this act are  
6    each added to chapter 48.31 RCW.

7        NEW SECTION.    **Sec. 112.**    If any provision of this act or its  
8    application to any person or circumstance is held invalid, the  
9    remainder of the act or the application of the provision to other  
10   persons or circumstances is not affected.

--- END ---