
SENATE BILL 5711

State of Washington

53rd Legislature

1993 Regular Session

By Senators Moore, Prince and Prentice; by request of Insurance Commissioner

Read first time 02/10/93. Referred to Committee on Labor & Commerce.

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 48.31 RCW; adding new sections to
10 chapter 48.74 RCW; adding a new section to chapter 48.92 RCW; adding
11 new chapters to Title 48 RCW; recodifying RCW 48.31.110, 48.31.120,
12 48.31.130, 48.31.140, 48.31.150, 48.31.160, 48.31.170, and 48.31.180;
13 creating a new section; repealing RCW 48.07.090, 48.31A.005,
14 48.31A.010, 48.31A.020, 48.31A.030, 48.31A.040, 48.31A.050, 48.31A.055,
15 48.31A.060, 48.31A.070, 48.31A.080, 48.31A.090, 48.31A.100, 48.31A.110,
16 48.31A.120, 48.31A.130, and 48.31A.900; and prescribing penalties.

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

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

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

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

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

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

27 (4) The term "insurer" has the same meaning as set forth in RCW
28 48.01.050; it does not include agencies, authorities, or
29 instrumentalities of the United States, its possessions and
30 territories, the commonwealth of Puerto Rico, the District of Columbia,
31 or a state or political subdivision of a state.

32 (5) A "person" is an individual, a corporation, a partnership, an
33 association, a joint stock company, a trust, an unincorporated
34 organization, a similar entity, or any combination of the foregoing
35 acting in concert, but does not include a joint venture partnership
36 exclusively engaged in owning, managing, leasing, or developing real or
37 tangible personal property.

38 (6) A "securityholder" of a specified person is one who owns a
39 security of that person, including common stock, preferred stock, debt

1 obligations, and any other security convertible into or evidencing the
2 right to acquire any of the foregoing.

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

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

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

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

30 For purposes of this section a domestic insurer includes a person
31 controlling a domestic insurer unless the person, as determined by the
32 commissioner, is either directly or through its affiliates primarily
33 engaged in business other than the business of insurance. However, the
34 person shall file a preacquisition notification with the commissioner
35 containing the information set forth in section 5(3)(a) of this act
36 sixty days before the proposed effective date of the acquisition.
37 Persons who fail to file the required preacquisition notification with

1 the commissioner are subject to the penalties in section 5(5)(c) of
2 this act. For the purposes of this section, "person" does not include
3 a securities broker holding, in usual and customary broker's function,
4 less than twenty percent of the voting securities of an insurance
5 company or of a person who controls an insurance company.

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

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

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

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

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

36 (c) Fully audited financial information as to the earnings and
37 financial condition of each acquiring party for the preceding five
38 fiscal years of each acquiring party, or for such lesser period as the
39 acquiring party and any predecessors have been in existence, and

1 similar unaudited information as of a date not earlier than ninety days
2 before the filing of the statement.

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

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

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

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

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

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

35 (j) Copies of all tender offers for, requests or invitations for
36 tenders of, exchange offers for, and agreements to acquire or exchange
37 any securities referred to in subsection (1) of this section, and, if
38 distributed, of additional soliciting material relating to the
39 securities.

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

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

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

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

29 (3) If an offer, request, invitation, agreement, or acquisition
30 referred to in subsection (1) of this section is proposed to be made by
31 means of a registration statement under the Securities Act of 1933 or
32 in circumstances requiring the disclosure of similar information under
33 the Securities Exchange Act of 1934, or under a state law requiring
34 similar registration or disclosure, the person required to file the
35 statement referred to in subsection (1) of this section may use those
36 documents in furnishing the information called for by that statement.

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

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

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

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

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

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

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

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

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

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

31 (b) The commissioner shall approve an exchange or other acquisition
32 of control referred to in section 4 of this act within sixty days after
33 he or she declares the statement filed under section 4 of this act to
34 be complete and after holding a public hearing. At the hearing, the
35 person filing the statement, the insurer, and any person whose
36 significant interest is determined by the commissioner to be affected
37 may present evidence, examine and cross-examine witnesses, and offer
38 oral and written arguments and in connection therewith may conduct
39 discovery proceedings in the same manner as is allowed in the superior

1 court of this state. All discovery proceedings must be concluded not
2 later than three days before the commencement of the public hearing.

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

13 (5) This section does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (iv) The acquisition of already affiliated persons;

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

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

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

1 (C) In no market would:

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

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

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

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

13 (vii) An acquisition of an insurer whose domiciliary commissioner
14 affirmatively finds: That the insurer is in failing condition; there
15 is a lack of feasible alternative to improving such condition; and the
16 public benefits of improving the insurer's condition through the
17 acquisition exceed the public benefits that would arise from not
18 lessening competition; and the findings are communicated by the
19 domiciliary commissioner to the commissioner of this state.

20 (3) An acquisition covered by subsection (2) of this section may be
21 subject to an order under subsection (5) of this section unless the
22 acquiring person files a preacquisition notification and the waiting
23 period has expired. The acquired person may file a preacquisition
24 notification.

25 (a) The preacquisition notification must be in such form and
26 contain such information as prescribed by the commissioner relating to
27 those markets that, under subsection (2)(b)(v) of this section, cause
28 the acquisition not to be exempted from this section. The commissioner
29 may require such additional material and information as he or she deems
30 necessary to determine whether the proposed acquisition, if
31 consummated, would violate the competitive standard of subsection (4)
32 of this section. The required information may include an opinion of an
33 economist as to the competitive impact of the acquisition in this state
34 accompanied by a summary of the education and experience of the person
35 indicating his or her ability to render an informed opinion.

36 (b) The waiting period required begins on the date the commissioner
37 declares the preacquisition notification to be complete and ends on the
38 earlier of the sixtieth day after the date of the declaration or the
39 termination of the waiting period by the commissioner. Before the end

1 of the waiting period, the commissioner may require the submission of
2 additional needed information relevant to the proposed acquisition. If
3 additional information is required, the waiting period ends on the
4 earlier of the sixtieth day after the commissioner declares he or she
5 has received the additional information or the termination of the
6 waiting period by the commissioner.

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

13 (b) In determining whether a proposed acquisition would violate the
14 competitive standard of (a) of this subsection, the commissioner shall
15 consider the following:

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

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

21	Insurer A	Insurer B
22	4%	4% or more
23	10%	2% or more
24	15%	1% or more; or

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

27	Insurer A	Insurer B
28	5%	5% or more
29	10%	4% or more
30	15%	3% or more
31	19%	1% or more

32 A highly concentrated market is one in which the share of the four
33 largest insurers is seventy-five percent or more of the market.
34 Percentages not shown in the tables are interpolated proportionately to
35 the percentages that are shown. If more than two insurers are
36 involved, exceeding the total of the two columns in the table is prima

1 facie evidence of violation of the competitive standard in (a) of this
2 subsection. For the purpose of (b)(i) of this subsection, the insurer
3 with the largest share of the market is Insurer A.

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

13 (A) There is a significant trend toward increased concentration in
14 the market;

15 (B) One of the insurers involved is one of the insurers in a
16 grouping of such large insurers showing the requisite increase in the
17 market share; and

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

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

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

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

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

35 (iv) Even though an acquisition is not prima facie violative of the
36 competitive standard under (b)(i) and (ii) of this subsection, the
37 commissioner may establish the requisite anticompetitive effect based
38 upon other substantial evidence. Even though an acquisition is prima
39 facie violative of the competitive standard under (b)(i) and (ii) of

1 this subsection, a party may establish the absence of the requisite
2 anticompetitive effect based upon other substantial evidence. Relevant
3 factors in making a determination under (b)(iv) of this subsection
4 include, but are not limited to, the following: Market shares,
5 volatility of ranking of market leaders, number of competitors,
6 concentration, trend of concentration in the industry, and ease of
7 entry and exit into the market.

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

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

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

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

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

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

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

31 (iii) An order entered under (a) of this subsection may not become
32 final earlier than thirty days after it is issued, during which time
33 the involved insurer may submit a plan to remedy the anticompetitive
34 impact of the acquisition within a reasonable time. Based upon the
35 plan or other information, the commissioner shall specify the
36 conditions, if any, under the time period during which the aspects of
37 the acquisition causing a violation of the standards of this section
38 would be remedied and the order vacated or modified.

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

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

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

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

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

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

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

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

24 (a) This section;

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

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

31 An insurer subject to registration under this section shall
32 register within fifteen days after it becomes subject to registration,
33 and annually thereafter by May 15th of each year for the previous
34 calendar year, unless the commissioner for good cause shown extends the
35 time for registration, and then within the extended time. The
36 commissioner may require an insurer authorized to do business in the
37 state that is a member of a holding company system, but that is not
38 subject to registration under this section, to furnish a copy of the

1 registration statement, the summary specified in subsection (3) of this
2 section, or other information filed by the insurance company with the
3 insurance regulatory authority of its domiciliary jurisdiction.

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

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

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

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

14 (i) Loans, other investments, or purchases, sales, or exchanges of
15 securities of the affiliates by the insurer or of the insurer by its
16 affiliates;

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

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

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

23 (v) All management agreements, service contracts, and cost-sharing
24 arrangements;

25 (vi) Reinsurance agreements;

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

27 (viii) Consolidated tax allocation agreements;

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

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

34 (3) Registration statements must contain a summary outlining all
35 items in the current registration statement representing changes from
36 the prior registration statement.

37 (4) No information need be disclosed on the registration statement
38 filed under subsection (2) of this section if the information is not
39 material for the purposes of this section. Unless the commissioner by

1 rule or order provides otherwise, sales, purchases, exchanges, loans or
2 extensions of credit, investments, or guarantees involving one-half of
3 one percent or less of an insurer's admitted assets as of the 31st day
4 of the previous December are not material for purposes of this section.

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

10 (b) Except as provided in section 7(2) of this act, no registered
11 insurer may pay a dividend or other distribution to shareholders until
12 fifteen business days have passed since the commissioner received the
13 report and information described in (a) of this subsection and the
14 commissioner has not disapproved the payment. The insurer may pay the
15 dividend or other distribution only if the commissioner has not
16 disapproved it within fifteen days after receiving the report and
17 information. The commissioner may not disapprove the payment unless
18 the commissioner determines either (i) that the insurer's surplus
19 regarding policyholders, after the dividend or distribution, would not
20 be reasonable in relation to the insurer's outstanding liabilities and
21 adequate to its financial needs; or (ii) that the insurer is
22 financially troubled. A disapproval may be effected without notice or
23 a hearing and without complying with the Administrative Procedure Act,
24 chapter 34.05 RCW, but any such disapproval may be appealed as provided
25 in that chapter for appeals from adjudicatory orders. The commissioner
26 may approve the payment, or state that it will not be disapproved,
27 before the fifteen business-day period has elapsed, in which case
28 payment may then be made immediately. This subsection does not remove
29 or limit any other ground on which the commissioner has the authority
30 to disapprove or otherwise prevent or limit a dividend or other
31 distribution to shareholders.

32 (c) Notwithstanding any other provision of law, an insurer may
33 declare a dividend or distribution that is conditional upon the
34 commissioner's not disapproving it. 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 fifteen business-day period referred
38 to in (a) of this subsection.

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

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

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

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

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

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

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

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

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

1 (ii) Charges or fees for services performed must be fair and
2 reasonable;

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

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

11 (v) The insurer's surplus regarding policyholders after dividends
12 or distributions to shareholder affiliates must be reasonable in
13 relation to the insurer's outstanding liabilities and adequate to its
14 financial needs.

15 (b) The following transactions involving a domestic insurer and a
16 person in its holding company system may not be entered into unless the
17 insurer has notified the commissioner in writing of its intention to
18 enter into the transaction and the commissioner declares the notice to
19 be sufficient at least sixty days before, or such shorter period as the
20 commissioner may permit, and the commissioner has not disapproved it
21 within that period:

22 (i) Sales, purchases, exchanges, loans or extensions of credit,
23 guarantees, or investments if the transactions are equal to or exceed:
24 (A) With respect to nonlife insurers, the lesser of three percent of
25 the insurer's admitted assets or twenty-five percent of surplus as
26 regards policyholders; (B) with respect to life insurers, three percent
27 of the insurer's admitted assets; each as of the 31st day of the
28 previous December;

29 (ii) Loans or extensions of credit to any person who is not an
30 affiliate, where the insurer makes the loans or extensions of credit
31 with the agreement or understanding that the proceeds of the
32 transactions, in whole or in substantial part, are to be used to make
33 loans or extensions of credit to, to purchase assets of, or to make
34 investments in, an affiliate of the insurer making the loans or
35 extensions of credit if the transactions are equal to or exceed: (A)
36 With respect to nonlife insurers, the lesser of three percent of the
37 insurer's admitted assets or twenty-five percent of surplus as regards
38 policyholders; (B) with respect to life insurers, three percent of the

1 insurer's admitted assets; each as of the 31st day of the previous
2 December;

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

11 (iv) Management agreements, service contracts, and cost-sharing
12 arrangements; and

13 (v) Material transactions, specified by rule, that the commissioner
14 determines may adversely affect the interests of the insurer's
15 policyholders.

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

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

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

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

35 (2)(a) No domestic insurer may pay an extraordinary dividend or
36 make any other extraordinary distribution to its shareholders until:
37 (i) Thirty days after the commissioner declares that he or she has
38 received sufficient notice of the declaration thereof and has not

1 within that period disapproved the payment; or (ii) the commissioner
2 has approved the payment within the thirty-day period.

3 (b) For purposes of this section, an extraordinary dividend or
4 distribution is a dividend or distribution of cash or other property
5 whose fair market value, together with that of other dividends or
6 distributions made within the period of twelve consecutive months
7 ending on the date on which the proposed dividend is scheduled for
8 payment or distribution, exceeds the greater of: (i) Ten percent of
9 the company's surplus as regards policyholders as of the 31st day of
10 the previous December; or (ii) the net gain from operations of the
11 company if the company is a life insurance company, or the net income
12 if the company is not a life insurance company, for the twelve month
13 period ending the 31st day of the previous December, but does not
14 include pro rata distributions of any class of the company's own
15 securities.

16 (c) Notwithstanding any other provision of law, an insurer may
17 declare an extraordinary dividend or distribution that is conditional
18 upon the commissioner's approval. The declaration confers no rights
19 upon shareholders until: (i) The commissioner has approved the payment
20 of the dividend or distribution; or (ii) the commissioner has not
21 disapproved the payment within the thirty-day period referred to in (a)
22 of this subsection.

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

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

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

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

33 (d) The extent of the geographical dispersion of the insurer's
34 insured risks;

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

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

38 (g) The recent past and projected future trend in the size of the
39 insurer's investment portfolio;

1 (h) The surplus as regards policyholders maintained by other
2 comparable insurers;

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

4 (j) The quality and liquidity of investments in affiliates. The
5 commissioner may discount any such investment or may treat any such
6 investment as a disallowed asset for purposes of determining the
7 adequacy of surplus as regards policyholders whenever in his or her
8 judgment the investment so warrants; and

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

11 NEW SECTION. **Sec. 8.** (1) Subject to the limitation contained in
12 this section and in addition to the powers that the commissioner has
13 under chapter 48.03 RCW relating to the examination of insurers, the
14 commissioner also may order an insurer registered under section 6 of
15 this act to produce such records, books, or other information papers in
16 the possession of the insurer or its affiliates as are reasonably
17 necessary to ascertain the financial condition of the insurer or to
18 determine compliance with this title. If the insurer fails to comply
19 with the order, the commissioner may examine the affiliates to obtain
20 the information.

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

27 (3) Each registered insurer producing for examination records,
28 books, and papers under subsection (1) of this section are liable for
29 and shall pay the expense of the examination in accordance with RCW
30 48.03.060.

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

34 NEW SECTION. **Sec. 10.** (1) Whenever it appears to the commissioner
35 that an insurer or a director, officer, employee, or agent of the
36 insurer has committed or is about to commit a violation of this chapter

1 or any rule or order of the commissioner under this chapter, the
2 commissioner may apply to the superior court for Thurston county or to
3 the court for the county in which the principal office of the insurer
4 is located for an order enjoining the insurer or the director, officer,
5 employee, or agent from violating or continuing to violate this chapter
6 or any such rule or order, and for such other equitable relief as the
7 nature of the case and the interest of the insurer's policyholders,
8 creditors, and shareholders or the public may require.

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

31 (3) If a person has acquired or is proposing to acquire voting
32 securities in violation of this chapter or a rule or order of the
33 commissioner under this chapter, the superior court for Thurston county
34 or the court for the county in which the insurer has its principal
35 place of business may, on such notice as the court deems appropriate,
36 upon the application of the insurer or the commissioner seize or
37 sequester voting securities of the insurer owned directly or indirectly
38 by the person, and issue such order with respect to the securities as
39 may be appropriate to carry out this chapter.

1 Notwithstanding any other provisions of law, for the purposes of
2 this chapter, the situs of the ownership of the securities of domestic
3 insurers is in this state.

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

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

25 (3) Whenever it appears to the commissioner that an insurer subject
26 to this chapter or a director, officer, employee, or agent of the
27 insurer has engaged in a transaction or entered into a contract that is
28 subject to section 7 of this act and that would not have been approved
29 had approval been requested, the commissioner may order the insurer to
30 cease and desist immediately any further activity under that
31 transaction or contract. After notice and hearing the commissioner may
32 also order the insurer to void any such contracts and restore the
33 status quo if that action is in the best interest of the policyholders,
34 creditors, or the public.

35 (4) Whenever it appears to the commissioner that an insurer or a
36 director, officer, employee, or agent of the insurer has committed a
37 willful violation of this chapter, the commissioner may refer the
38 matter to the prosecuting attorney of Thurston county or the county in

1 which the principal office of the insurer is located. An insurer that
2 willfully violates this chapter may be fined not more than one million
3 dollars. Any individual who willfully violates this chapter may be
4 fined in his or her individual capacity not more than ten thousand
5 dollars, or be imprisoned for not more than three years, or both.

6 (5) An officer, director, or employee of an insurance holding
7 company system who willfully and knowingly subscribes to or makes or
8 causes to be made a false statement or false report or false filing
9 with the intent to deceive the commissioner in the performance of his
10 or her duties under this chapter, upon conviction thereof, shall be
11 imprisoned for not more than three years or fined not more than ten
12 thousand dollars or both. The officer, director, or employee upon whom
13 the fine is imposed shall pay the fine in his or her individual
14 capacity.

15 NEW SECTION. **Sec. 12.** Whenever it appears to the commissioner
16 that a person has committed a violation of this chapter that so impairs
17 the financial condition of a domestic insurer as to threaten insolvency
18 or make the further transaction of business by it hazardous to its
19 policyholders, creditors, shareholders, or the public, the commissioner
20 may proceed as provided in RCW 48.31.030 and 48.31.040 to take
21 possession of the property of the domestic insurer and to conduct the
22 business of the insurer.

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

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

6 (3) A person who was a parent corporation or holding company or a
7 person who otherwise controlled the insurer or affiliate when the
8 distributions were paid is liable up to the amount of distributions or
9 payments under subsection (1) of this section the person received. A
10 person who controlled the insurer at the time the distributions were
11 declared is liable up to the amount of distributions he or she would
12 have received if they had been paid immediately. If two or more
13 persons are liable with respect to the same distributions, they are
14 jointly and severally liable.

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

19 (5) To the extent that a person liable under subsection (3) of this
20 section is insolvent or otherwise fails to pay claims due from it under
21 those provisions, its parent corporation or holding company or person
22 who otherwise controlled it at the time the distribution was paid, is
23 jointly and severally liable for a resulting deficiency in the amount
24 recovered from the parent corporation or holding company or person who
25 otherwise controlled it.

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

35 NEW SECTION. **Sec. 15.** (1) A person aggrieved by an act,
36 determination, rule, order, or any other action of the commissioner

1 under this chapter may proceed in accordance with the Administrative
2 Procedure Act, chapter 34.05 RCW.

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

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

9 NEW SECTION. **Sec. 17.** Unless the context clearly requires
10 otherwise, the definitions in this section apply throughout this
11 chapter.

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

16 (2) "Broker" means an insurance broker or brokers or any other
17 person, firm, association, or corporation, when, for compensation,
18 commission, or other thing of value, the person, firm, association, or
19 corporation acts or aids in any manner in soliciting, negotiating, or
20 procuring the making of an insurance contract on behalf of an insured
21 other than the person, firm, association, or corporation.

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

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

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

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

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

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

1 (c) Captive insurers. For the purposes of this chapter, captive
2 insurers are insurance companies owned by another organization, whose
3 exclusive purpose is to insure risks of the parent organization and
4 affiliated companies or, in the case of groups and associations,
5 insurance organizations owned by the insureds whose exclusive purpose
6 is to insure risks to member organizations or group members, or both,
7 and their affiliates.

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

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

22 (b) Notwithstanding (a) of this subsection, this section does not
23 apply if:

24 (i) The controlling producer:

25 (A) Places insurance only with the controlled insurer; or only with
26 the controlled insurer and a member or members of the controlled
27 insurer's holding company system, or the controlled insurer's parent,
28 affiliate, or subsidiary and receives no compensation based upon the
29 amount of premiums written in connection with the insurance; and

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

32 (ii) The controlled insurer, except for business written through a
33 residual market facility such as the assigned risk plan, fair plans, or
34 other such plans, accepts insurance business only from a controlling
35 broker, a broker controlled by the controlled insurer, or a broker that
36 is a subsidiary of the controlled insurer.

1 (2) A controlled insurer may not accept business from a controlling
2 broker and a controlling broker may not place business with a
3 controlled insurer unless there is a written contract between the
4 controlling broker and the insurer specifying the responsibilities of
5 each party, which contract has been approved by the board of directors
6 of the insurer and contains the following minimum provisions:

7 (a) The controlled insurer may terminate the contract for cause,
8 upon written notice to the controlling broker. The controlled insurer
9 shall suspend the authority of the controlling broker to write business
10 during the pendency of a dispute regarding the cause for the
11 termination;

12 (b) The controlling broker shall render accounts to the controlling
13 insurer detailing all material transactions, including information
14 necessary to support all commissions, charges, and other fees received
15 by, or owing to, the controlling broker;

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

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

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

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

33 (g) The controlled insurer shall provide the controlling broker
34 with its underwriting standards, rules, and procedures, manuals setting
35 forth the rates to be charged, and the conditions for the acceptance or
36 rejection of risks. The controlling broker shall adhere to the
37 standards, rules, procedures, rates, and conditions that are the same
38 as those applicable to comparable business placed with the controlled
39 insurer by a broker other than the controlling broker;

1 (h) The rates of the controlling broker's commissions, charges, and
2 other fees must be no greater than those applicable to comparable
3 business placed with the controlled insurer by brokers other than
4 controlling brokers. For purposes of (g) and (h) of this subsection,
5 examples of comparable business include the same lines of insurance,
6 same kinds of insurance, same kinds of risks, similar policy limits,
7 and similar quality of business;

8 (i) If the contract provides that the controlling broker, on
9 insurance business placed with the insurer, is to be compensated
10 contingent upon the insurer's profits on that business, then the
11 compensation shall not be determined and paid until at least five years
12 after the premiums on liability insurance are earned and at least one
13 year after the premiums are earned on any other insurance. In no event
14 may the commissions be paid until the adequacy of the controlled
15 insurer's reserves on remaining claims has been independently verified
16 under subsection (3) of this section;

17 (j) The insurer may establish a different limit on the controlling
18 broker's writings in relation to the controlled insurer's surplus and
19 total writings for each line or subline of business. The controlled
20 insurer shall notify the controlling broker when the applicable limit
21 is approached and may not accept business from the controlling broker
22 if the limit is reached. The controlling broker may not place business
23 with the controlled insurer if it has been notified by the controlled
24 insurer that the limit has been reached; and

25 (k) The controlling broker may negotiate but may not bind
26 reinsurance on behalf of the controlled insurer on business the
27 controlling broker places with the controlled insurer, except that the
28 controlling broker may bind facultative reinsurance contracts under
29 obligatory facultative agreements if the contract with the controlled
30 insurer contains underwriting guidelines including, for both
31 reinsurance assumed and ceded, a list of reinsurers with which the
32 automatic agreements are in effect, the coverages and amounts of
33 percentages that may be reinsured, and commission schedules.

34 (3) Every controlled insurer shall have an audit committee of the
35 board of directors composed of independent directors. The audit
36 committee shall annually meet with management, the insurer's
37 independent certified public accountants, and an independent casualty
38 actuary or other independent loss reserve specialist acceptable to the
39 commissioner to review the adequacy of the insurer's loss reserves.

1 (4)(a) In addition to any other required loss reserve
2 certification, the controlled insurer shall, annually, on April 1st of
3 each year, file with the commissioner an opinion of an independent
4 casualty actuary, or such other independent loss reserve specialist
5 acceptable to the commissioner, reporting loss ratios for each line of
6 business written and attesting to the adequacy of loss reserves
7 established for losses incurred and outstanding as of year-end,
8 including losses incurred but not reported, on business placed by the
9 broker; and

10 (b) The controlled insurer shall annually report to the
11 commissioner the amount of commissions paid to the producer, the
12 percentage that amount represents of the net premiums written, and
13 comparable amounts and percentages paid to noncontrolling brokers for
14 placements of the same kinds of insurance.

15 NEW SECTION. **Sec. 20.** The broker, before the effective date of
16 the policy, shall deliver written notice to the prospective insured
17 disclosing the relationship between the broker and the controlled
18 insurer, except that, if the business is placed through a subbroker who
19 is not a controlling broker, the controlling broker shall retain in his
20 or her records a signed commitment from the subbroker that the
21 subbroker is aware of the relationship between the insurer and the
22 broker and that the subbroker has notified or will notify the insured.

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

28 (b) If it is found that because of material noncompliance that the
29 controlled insurer or any policyholder thereof has suffered loss or
30 damage, the commissioner may maintain a civil action or intervene in an
31 action brought by or on behalf of the insurer or policyholder for
32 recovery of compensatory damages for the benefit of the insurer or
33 policyholder or other appropriate relief.

34 (2) If an order for liquidation or rehabilitation of the controlled
35 insurer has been entered under chapter 48.31 RCW, and the receiver
36 appointed under that order believes that the controlling broker or any
37 other person has not materially complied with this chapter, or a rule

1 adopted or order issued under this chapter, and the insurer suffered
2 any loss or damage from the noncompliance, the receiver may maintain a
3 civil action for recovery of damages or other appropriate sanctions for
4 the benefit of the insurer.

5 (3) Nothing contained in this section alters or affects the right
6 of the commissioner to impose other penalties provided for in this
7 title.

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

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

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

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

16 (2) "Controlling person" means a person, firm, association, or
17 corporation who directly or indirectly has the power to direct or cause
18 to be directed, the management, control, or activities of the
19 reinsurance intermediary.

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

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

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

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

31 (7) "Reinsurance intermediary-manager" means a person, firm,
32 association, or corporation who has authority to bind or manages all or
33 part of the assumed reinsurance business of a reinsurer, including the
34 management of a separate division, department, or underwriting office,
35 and acts as an agent for the reinsurer whether known as a reinsurance
36 intermediary-manager, manager, or other similar term. Notwithstanding
37 this subsection, the following persons are not considered a reinsurance

1 intermediary-manager, with respect to such reinsurer, for the purposes
2 of this chapter:

3 (a) An employee of the reinsurer;

4 (b) A United States manager of the United States branch of an alien
5 reinsurer;

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

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

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

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

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

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

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

29 (c) Has been determined by either the commissioner, or the
30 securities valuation office of the National Association of Insurance
31 Commissioners, to meet such standards of financial condition and
32 standing as are considered necessary and appropriate to regulate the
33 quality of financial institutions whose letters of credit will be
34 acceptable to the commissioner.

35 NEW SECTION. **Sec. 24.** (1) No person, firm, association, or
36 corporation may act as a reinsurance intermediary-broker in this state
37 if the person, firm, association, or corporation maintains an office

1 either directly or as a member or employee of a firm or association, or
2 an officer, director, or employee of a corporation:

3 (a) In this state, unless the person, firm, association, or
4 corporation is a licensed reinsurance intermediary-broker in this
5 state; or

6 (b) In another state, unless the person, firm, association, or
7 corporation is a licensed reinsurance intermediary-broker in this state
8 or another state having a regulatory scheme substantially similar to
9 this chapter.

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

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

15 (b) In this state, if the person, firm, association, or corporation
16 maintains an office either directly or as a member or employee of a
17 firm or association, or an officer, director, or employee of a
18 corporation in this state, unless the person, firm, association, or
19 corporation is a licensed reinsurance intermediary-manager in this
20 state;

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

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

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

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

31 (4)(a) The commissioner may issue a reinsurance intermediary
32 license to a person, firm, association, or corporation who has complied
33 with the requirements of this chapter. Any such license issued to a
34 firm or association authorizes all the members of the firm or
35 association and any designated employees to act as reinsurance
36 intermediaries under the license, and all such persons may be named in
37 the application and any supplements to it. Any such license issued to
38 a corporation authorizes all of the officers, and any designated
39 employees and directors of it, to act as reinsurance intermediaries on

1 behalf of the corporation, and all such persons must be named in the
2 application and any supplements to it.

3 (b) If the applicant for a reinsurance intermediary license is a
4 nonresident, the applicant, as a condition precedent to receiving or
5 holding a license, shall designate the commissioner as agent for
6 service of process in the manner, and with the same legal effect,
7 provided for by this title for designation of service of process upon
8 unauthorized insurers, and also shall furnish the commissioner with the
9 name and address of a resident of this state upon whom notices or
10 orders of the commissioner or process affecting the nonresident
11 reinsurance intermediary may be served. The licensee shall promptly
12 notify the commissioner in writing of every change in its designated
13 agent for service of process, but the change does not become effective
14 until acknowledged by the commissioner.

15 (5) The commissioner may refuse to issue a reinsurance intermediary
16 license if, in his or her judgment, the applicant, anyone named on the
17 application, or a member, principal, officer, or director of the
18 applicant, is not trustworthy, or that a controlling person of the
19 applicant is not trustworthy to act as a reinsurance intermediary, or
20 that any of the foregoing has given cause for revocation or suspension
21 of the license, or has failed to comply with a prerequisite for the
22 issuance of such license. Upon written request, the commissioner will
23 furnish a summary of the basis for refusal to issue a license, which
24 document is privileged and not subject to chapter 42.17 RCW.

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

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

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

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

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

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

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

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

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

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

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

21 (c) Reporting and settlement requirements of balances;

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

23 (e) Names and addresses of assuming reinsurers;

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

26 (g) Related correspondence and memoranda;

27 (h) Proof of placement;

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

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 28.** Transactions between a reinsurance
20 intermediary manager and the reinsurer it represents in such capacity
21 may be entered into only under a written contract, specifying the
22 responsibilities of each party, which shall be approved by the
23 reinsurer's board of directors. At least thirty days before the
24 reinsurer assumes or cedes business through the reinsurance
25 intermediary-manager, a true copy of the approved contract must be
26 filed with the commissioner for approval. The contract must, at a
27 minimum, provide that:

28 (1) The reinsurer may terminate the contract for cause upon written
29 notice to the reinsurance intermediary-manager. The reinsurer may
30 immediately suspend the authority of the reinsurance intermediary-
31 manager to assume or cede business during the pendency of a dispute
32 regarding the cause for termination.

33 (2) The reinsurance intermediary-manager shall render accounts to
34 the reinsurer accurately detailing all material transactions, including
35 information necessary to support all commissions, charges, and other
36 fees received by, or owing to, the reinsurance intermediary-manager,

1 and remit all funds due under the contract to the reinsurer on not less
2 than a monthly basis.

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

10 (4) For at least ten years after expiration of each contract of
11 reinsurance transacted by the reinsurance intermediary-manager, the
12 reinsurance intermediary-manager shall keep a complete record for each
13 transaction showing:

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

16 (b) Period of coverage, including effective and expiration dates,
17 cancellation provisions, and notice required of cancellation, and
18 disposition of outstanding reserves on covered risks;

19 (c) Reporting and settlement requirements of balances;

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

21 (e) Names and addresses of reinsurers;

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

24 (g) Related correspondence and memoranda;

25 (h) Proof of placement;

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

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

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

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

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

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

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

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

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

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

14 (a) All claims will be reported to the reinsurer in a timely
15 manner;

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

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

20 (ii) Involves a coverage dispute;

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

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

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

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

31 (d) Settlement authority granted to the reinsurance intermediary-
32 manager may be terminated for cause upon the reinsurer's written notice
33 to the reinsurance intermediary-manager or upon the termination of the
34 contract. The reinsurer may suspend the settlement authority during
35 the pendency of a dispute regarding the cause of termination.

36 (10) If the contract provides for a sharing of interim profits by
37 the reinsurance intermediary-manager, such interim profits will not be
38 paid until one year after the end of each underwriting period for
39 property business and five years after the end of each underwriting

1 period for casualty business, or a later period set by the commissioner
2 for specified lines of insurance, and not until the adequacy of
3 reserves on remaining claims has been verified under section 30(3) of
4 this act.

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

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

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

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

17 NEW SECTION. **Sec. 29.** The reinsurance intermediary-manager may
18 not:

19 (1) Cede retrocessions on behalf of the reinsurer, except that the
20 reinsurance intermediary-manager may cede facultative retrocessions
21 under obligatory automatic agreements if the contract with the
22 reinsurer contains reinsurance underwriting guidelines for the
23 retrocessions. The guidelines must include a list of reinsurers with
24 which the automatic agreements are in effect, and for each such
25 reinsurer, the coverages and amounts or percentages that may be
26 reinsured, and commission schedules.

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

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

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

36 (5) Collect a payment from a retrocessionaire or commit the
37 reinsurer to a claim settlement with a retrocessionaire, without prior

1 approval of the reinsurer. If prior approval is given, a report must
2 be promptly forwarded to the reinsurer.

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

7 (7) Appoint a subreinsurance intermediary-manager.

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

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

16 (3) If a reinsurance intermediary-manager establishes loss
17 reserves, the reinsurer shall annually obtain the opinion of an actuary
18 attesting to the adequacy of loss reserves established for losses
19 incurred and outstanding on business produced by the reinsurance
20 intermediary-manager. This opinion is in addition to any other
21 required loss reserve certification.

22 (4) Binding authority for all retrocessional contracts or
23 participation in reinsurance syndicates must rest with an officer of
24 the reinsurer who is not affiliated with the reinsurance intermediary-
25 manager.

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

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

36 NEW SECTION. **Sec. 31.** (1) A reinsurance intermediary is subject
37 to examination by the commissioner. The commissioner has access to all

1 books, bank accounts, and records of the reinsurance intermediary in a
2 form usable to the commissioner.

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

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

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

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

12 (c) If a violation was committed by the reinsurance intermediary,
13 make restitution to the insurer, reinsurer, rehabilitator, or
14 liquidator of the insurer or reinsurer for the net losses incurred by
15 the insurer or reinsurer attributable to the violation.

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

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

21 (4) Nothing contained in this chapter is intended to or in any
22 manner limits or restricts the rights of policyholders, claimants,
23 creditors, or other third parties or confer any rights to those
24 persons.

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

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

29 NEW SECTION. **Sec. 35.** Unless the context clearly requires
30 otherwise, the definitions in this section apply throughout this
31 chapter.

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

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

1 (3) "Managing general agent" means:

2 (a) A person who manages all or part of the insurance business of
3 an insurer, including the management of a separate division,
4 department, or underwriting office, and acts as a representative of the
5 insurer whether known as a managing general agent, manager, or other
6 similar term, and who, with or without the authority, either separately
7 or together with affiliates, produces, directly or indirectly, and
8 underwrites an amount of gross direct written premium equal to or more
9 than five percent of the policyholder surplus as reported in the last
10 annual statement of the insurer in any one quarter or year together
11 with one or more of the following activities related to the business
12 produced:

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

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

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

18 (i) An employee of the insurer;

19 (ii) A United States manager of the United States branch of an
20 alien insurer;

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

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

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

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

37 (2) No person may act in the capacity of a managing general agent
38 representing an insurer domiciled in this state with respect to risks

1 located outside this state unless that person is licensed as an agent
2 in this state, under chapter 48.17 RCW, for the lines of insurance
3 involved and is designated as a managing general agent and appointed as
4 such by the insurer.

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

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

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

15 (1) The insurer may terminate the contract for cause upon written
16 notice to the managing general agent. The insurer may suspend the
17 underwriting authority of the managing general agent during the
18 pendency of a dispute regarding the cause for termination.

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

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

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

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

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

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

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

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

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

14 (i) Has the potential to exceed an amount determined by the
15 commissioner, or exceeds the limit set by the insurer, whichever is
16 less;

17 (ii) Involves a coverage dispute;

18 (iii) May exceed the managing general agent's claims settlement
19 authority;

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

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

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

28 (d) Settlement authority granted to the managing general agent may
29 be terminated for cause upon the insurer's written notice to the
30 managing general agent or upon the termination of the contract. The
31 insurer may suspend the managing general agent's settlement authority
32 during the pendency of a dispute regarding the cause for termination.

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

35 (9) If the contract provides for a sharing of interim profits by
36 the managing general agent, and the managing general agent has the
37 authority to determine the amount of the interim profits by
38 establishing loss reserves or controlling claim payments or in any
39 other manner, interim profits shall not be paid to the managing general

1 agent until one year after they are earned for property insurance
2 business and five years after they are earned on casualty business and
3 not until the profits have been verified under section 38 of this act.

4 (10) The managing general agent may not:

5 (a) Bind reinsurance or retrocessions on behalf of the insurer,
6 except that the managing general agent may bind automatic reinsurance
7 contracts under obligatory automatic agreements if the contract with
8 the insurer contains reinsurance underwriting guidelines including, for
9 both reinsurance assumed and ceded, a list of reinsurers with which the
10 automatic agreements are in effect, the coverages and amounts or
11 percentages that may be reinsured, and commission schedules;

12 (b) Commit the insurer to participate in insurance or reinsurance
13 syndicates;

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

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

20 (e) Collect a payment from a reinsurer or commit the insurer to a
21 claim settlement with a reinsurer, without prior approval of the
22 insurer. If prior approval is given, a report shall be promptly
23 forwarded to the insurer;

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

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

27 (h) Appoint a submanaging general agent.

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

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

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

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

8 (5) Within thirty days of entering into or terminating a contract
9 with a managing general agent, the insurer shall provide written
10 notification of that appointment or termination to the commissioner.
11 Notices of appointment of a managing general agent must include a
12 statement of duties that the managing general agent is expected to
13 perform on behalf of the insurer, the lines of insurance for which the
14 managing general agent is to be authorized to act, and any other
15 information the commissioner may request. This subsection applies to
16 managing general agents operating in this state.

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

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

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

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

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

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

5 (c) The managing general agent to reimburse the insurer, the
6 rehabilitator, or liquidator of the insurer for losses incurred by the
7 insurer caused by a violation of this chapter committed by the managing
8 general agent.

9 (2) The decision, determination, or order of the commissioner under
10 this section is subject to judicial review under chapters 34.05 and
11 48.04 RCW.

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

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

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

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

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

25 (1) The commissioner shall examine the affairs, transactions,
26 accounts, records, documents, and assets of each authorized insurer as
27 often as he or she deems advisable. ((He)) The commissioner shall so
28 examine each ((domestic)) insurer holding a certificate of authority or
29 certificate of registration not less frequently than every five years.
30 Examination of an alien insurer may be limited to its insurance
31 transactions in the United States. In scheduling and determining the
32 nature, scope, and frequency of an examination, the commissioner shall
33 consider such matters as the results of financial statement analyses
34 and ratios, changes in management or ownership, actuarial opinions,
35 reports of independent certified public accountants, and other criteria
36 as set forth in the examiner's handbook adopted by the National

1 Association of Insurance Commissioners and in effect when the
2 commissioner exercises discretion under this section.

3 (2) As often as ((he)) the commissioner deems advisable and at
4 least once in five years, the commissioner shall fully examine each
5 rating organization and examining bureau licensed in this state. As
6 often as he or she deems it advisable ((he)) the commissioner may
7 examine each advisory organization and each joint underwriting or joint
8 reinsurance group, association, or organization.

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

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

33 (5) The commissioner may elect to accept and rely on an audit
34 report made by an independent certified public accountant for the
35 insurer in the course of that part of the commissioner's examination
36 covering the same general subject matter as the audit. The
37 commissioner may incorporate the audit report in his or her report of
38 the examination.

1 (6) For the purposes of completing an examination of any company
2 under this chapter, the commissioner may examine or investigate any
3 managing general agent or any other person, or the business of any
4 managing general agent or other person, insofar as that examination or
5 investigation is, in the sole discretion of the commissioner, necessary
6 or material to the examination of the company.

7 **NEW SECTION. Sec. 44.** A new section is added to chapter 48.03 RCW
8 to read as follows:

9 Upon determining that an examination should be conducted, the
10 commissioner or the commissioner's designee shall appoint one or more
11 examiners to perform the examination and instruct them as to the scope
12 of the examination. In conducting the examination, the examiner shall
13 observe those guidelines and procedures set forth in the examiners'
14 handbook adopted by the National Association of Insurance
15 Commissioners. The commissioner may also employ such other guidelines
16 or procedures as the commissioner may deem appropriate.

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

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

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

28 (3) The commissioner shall furnish a copy of the examination report
29 to the person examined not less than ten days and, unless the time is
30 extended by the commissioner, not more than thirty days prior to the
31 filing of the report for public inspection in the commissioner's
32 office. If such person so requests in writing within such (~~ten-day~~)
33 period, the commissioner shall hold a hearing to consider objections of
34 such person to the report as proposed, and shall not so file the report
35 until after such hearing and until after any modifications in the
36 report deemed necessary by the commissioner have been made.

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

6 (a) Adopting the examination report as filed or with modification
7 or corrections. If the examination report reveals that the company is
8 operating in violation of any law, rule, or order of the commissioner,
9 the commissioner may order the company to take any action the
10 commissioner considers necessary and appropriate to cure that
11 violation;

12 (b) Rejecting the examination report with directions to the
13 examiners to reopen the examination for purposes of obtaining
14 additional data, documentation, or information, and refileing under this
15 section; or

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

19 (5) All orders entered under subsection (4) of this section must be
20 accompanied by findings and conclusions resulting from the
21 commissioner's consideration and review of the examination report,
22 relevant examiner workpapers, and any written submissions or rebuttals.
23 Such an order is considered a final administrative decision and may be
24 appealed under the Administrative Procedure Act, chapter 34.05 RCW, and
25 must be served upon the company by certified mail, together with a copy
26 of the adopted examination report. A copy of the adopted examination
27 report must be sent by certified mail to each director at the
28 director's residence address.

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

36 (b) Nothing in this title prohibits the commissioner from
37 disclosing the content of an examination report, preliminary
38 examination report or results, or any matter relating thereto, to the
39 insurance department of any other state or country, or to law

1 enforcement officials of this or any other state or agency of the
2 federal government at any time, so long as the agency or office
3 receiving the report or matters relating thereto agrees in writing to
4 hold it confidential and in a manner consistent with this chapter.

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

8 (d) Nothing contained in this section requires the commissioner to
9 disclose any information or records that would indicate or show the
10 existence or content of any investigation or activity of a criminal
11 justice agency.

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

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

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

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

24 (2) Every other examination, whatsoever, or any part of the
25 examination of any person domiciled or having its home offices in this
26 state requiring travel and services outside this state, shall be made
27 by the commissioner or by examiners designated by ~~((him))~~ the
28 commissioner and shall be at the expense of the person examined; but a
29 domestic insurer shall not be liable for the compensation of examiners
30 employed by the commissioner for such services outside this state.

31 (3) When making an examination under this chapter, the commissioner
32 may retain attorneys, appraisers, independent actuaries, independent
33 certified public accountants, or other professionals and specialists as
34 examiners, the cost of which shall be borne by the person who is the
35 subject of the examination, except as provided in subsection (1) of
36 this section.

1 (4) The person examined and liable therefor shall reimburse the
2 state upon presentation of an itemized statement thereof, for the
3 actual travel expenses of the commissioner's examiners, their
4 reasonable living expense allowance, and their per diem compensation,
5 including salary and the employer's cost of employee benefits, at a
6 reasonable rate approved by the commissioner, incurred on account of
7 the examination. Per diem salary and expenses for employees examining
8 insurers domiciled outside the state of Washington shall be established
9 by the commissioner on the basis of the National Association of
10 Insurance Commissioner's recommended salary and expense schedule for
11 zone examiners, or the salary schedule established by the state
12 personnel board and the expense schedule established by the office of
13 financial management, whichever is higher. Domestic title insurer
14 shall pay the examination expense and costs to the commissioner as
15 itemized and billed by him or her.

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

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

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

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

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

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

34 (c) An investment owner in shares of regulated diversified
35 investment companies; or

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

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

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

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

15 (2) No cause of action may arise nor may any liability be imposed
16 against any person for the act of communicating or delivering
17 information or data to the commissioner or the commissioner's
18 authorized representative or examiner pursuant to an examination made
19 under this chapter, if that act of communication or delivery was
20 performed in good faith and without fraudulent intent or the intent to
21 deceive.

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

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

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

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

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

6 (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority
7 to transact any one kind of insurance as defined in chapter 48.11 RCW
8 or combination of kinds of insurance as shown below, a foreign or alien
9 insurer, whether stock or mutual, or a domestic insurer hereafter
10 formed shall possess and thereafter maintain unimpaired paid-in capital
11 stock, if a stock insurer, or unimpaired surplus if a mutual insurer,
12 and shall possess when first so authorized additional funds in surplus
13 as follows:

14		Paid-in capital	
15	Kind or kinds	stock or	Additional
16	of insurance	basic surplus	surplus
17	Life	\$2,000,000	\$2,000,000
18	Disability	2,000,000	2,000,000
19	Life and disability	2,400,000	2,400,000
20	Property	2,000,000	2,000,000
21	Marine & transportation	2,000,000	2,000,000
22	General casualty	2,400,000	2,400,000
23	Vehicle	2,000,000	2,000,000
24	Surety	2,000,000	2,000,000
25	Any two of the following		
26	kinds of insurance:		
27	Property, marine &		
28	transportation, general		
29	casualty, vehicle,		
30	surety, disability	3,000,000	3,000,000
31	Multiple lines (all insurances		
32	except life and title		
33	insurance)	3,000,000	3,000,000
34	Title (in accordance with the		
35	provisions of chapter 48.29		
36	RCW)		

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

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

23 (4) The commissioner may, by rule, require insurers to maintain
24 additional capital and surplus based upon the type, volume, and nature
25 of insurance business transacted consistent with the methods then
26 adopted by the National Association of Insurance Commissioners for
27 determining the appropriate amount of additional capital and surplus to
28 be required. In the absence of an applicable rule, the commissioner
29 may, after a hearing or with the consent of the insurer, require an
30 insurer to have and maintain a larger amount of capital or surplus than
31 prescribed under this section or the rules under this section, based
32 upon the volume and kinds of insurance transacted by the insurer and on
33 the principles of risk-based capital as determined by the National
34 Association of Insurance Commissioners. This subsection applies only
35 to insurers authorized to write life insurance, disability insurance,
36 or both.

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) Reinsurance in an alien reinsurer not qualified under RCW
2 48.05.300 may not be deducted in determining risk retained for the
3 purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1	(a) For filing charter documents:	
2	(i) Original charter documents, bylaws or record of	
3	organization of insurers, or certified copies	
4	thereof, required to be filed	\$250.00
5	(ii) Amended charter documents, or certified copy	
6	thereof, other than amendments of bylaws	\$ 10.00
7	(iii) No additional charge or fee shall be required	
8	for filing any of such documents in the office	
9	of the secretary of state.	
10	(b) Certificate of authority:	
11	(i) Issuance	\$ 25.00
12	(ii) Renewal	\$ 25.00
13	(c) Annual statement of insurer, filing	\$ 20.00
14	(d) Organization or financing of domestic insurers and affiliated	
15	corporations:	
16	(i) Application for solicitation permit, filing . . .	\$100.00
17	(ii) Issuance of solicitation permit	\$ 25.00
18	(e) Agents' licenses:	
19	(i) Agent's qualification licenses each year	\$ 25.00
20	(ii) Filing of appointment of each such agent, each	
21	year	\$ 10.00
22	(iii) Limited license issued pursuant to RCW	
23	48.17.190, each year	\$ 10.00
24	(f) Reinsurance intermediary licenses:	
25	<u>(i) Reinsurance intermediary-broker, each year</u>	<u>\$ 50.00</u>
26	<u>(ii) Reinsurance intermediary-manager, each year</u>	<u>\$100.00</u>
27	(g) Brokers' licenses:	
28	(i) Broker's license, each year	\$ 50.00
29	(ii) Surplus line broker, each year	\$100.00
30	((g)) <u>(h) Solicitors' license, each year</u>	<u>\$ 10.00</u>
31	((h)) <u>(i) Adjusters' licenses:</u>	
32	(i) Independent adjuster, each year	\$ 25.00
33	(ii) Public adjuster, each year	\$ 25.00
34	((i)) <u>(j) Resident general agent's license, each year . . .</u>	<u>\$ 25.00</u>

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. 57. (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. 58.** (1) No delinquency proceeding may be
18 commenced under this chapter by anyone other than the commissioner of
19 this state, and no court has jurisdiction to entertain a proceeding
20 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. 59.** (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. 60.** (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. 61.** (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. 62.** (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. 63.** 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. 64.** (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. 65.** (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. 66.** 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. 67.** 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. 68.** 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. 69.** (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. 70.** (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. 71.** The commissioner in his or her sole
16 discretion may institute proceedings under section 60 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. 72.** (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. 73.** 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. 74.** 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. 75.** 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. 76. 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. 77.** 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. 78.** 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. 79.** 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. 80.** 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. 81.** 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. 82.** 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. 83.** 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. 84. 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. 85.** 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 89 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 89 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 89 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 Guarantee Duration 2 3 (Years)	4 Weighting Factor 5 for Plan Type		
	6 A	7 B	8 C
9 5 or less:	.80	.60	.50
10 More than 5, but not more than 10:	.75	.60	.50
11 More than 10, but not more than 20:	.65	.50	.45
12 More than 20:	.45	.35	.35

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

16	17 Plan Type		
	18 A	19 B	20 C
21	.15	.25	.05

22 (C) For annuities and guaranteed interest contracts valued on an
23 issue year basis other than those with no cash settlement options which
24 do not guarantee interest on considerations received more than one year
25 after issue or purchase and for annuities and guaranteed interest
26 contracts valued on a change in fund basis which do not guarantee
27 interest rates on considerations received more than twelve months
28 beyond the valuation date, the factors shown in (d)(iii) (A) of this
29 subsection or derived in (d)(iii) (B) of this subsection increased by:

30	31 Plan Type		
	32 A	33 B	34 C
35	.05	.05	.05

36 (D) For other annuities with cash settlement options and guaranteed
37 interest contracts with cash settlement options, the guarantee duration
38 is the number of years for which the contract guarantees interest rates
39 in excess of the calendar year statutory valuation interest rate for
40 life insurance policies with guarantee duration in excess of twenty
41 years. For other annuities with no cash settlement options and for
42 guaranteed interest contracts with no cash settlement options, the
43 guarantee duration is the number of years from the date of issue or
44 date of purchase to the date annuity benefits are scheduled to
45 commence.

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

3 Plan Type A: At any time a policyholder may withdraw funds only:
4 (1) With an adjustment to reflect changes in interest rates or asset
5 values since receipt of the funds by the insurance company; or (2)
6 without such adjustment but in installments over five years or more; or
7 (3) as an immediate life annuity; or (4) no withdrawal permitted.

8 Plan Type B: Before expiration of the interest rate guarantee, a
9 policyholder may withdraw funds only: (1) With adjustment to reflect
10 changes in interest rates or asset values since receipt of the funds by
11 the insurance company; or (2) without such adjustment but in
12 installments over five years or more; or (3) no withdrawal permitted.
13 At the end of the interest rate guarantee, funds may be withdrawn
14 without such adjustment in a single sum or installments over less than
15 five years.

16 Plan Type C: A policyholder may withdraw funds before expiration
17 of the interest rate guarantee in a single sum or installments over
18 less than five years either: (1) Without adjustment to reflect changes
19 in interest rates or asset values since receipt of the funds by the
20 insurance company; or (2) subject only to a fixed surrender charge
21 stipulated in the contract as a percentage of the fund.

22 (F) A company may elect to value guaranteed interest contracts with
23 cash settlement options and annuities with cash settlement options on
24 either an issue year basis or on a change in fund basis. Guaranteed
25 interest contracts with no cash settlement options and other annuities
26 with no cash settlement options must be valued on an issue year basis.
27 As used in this section, an issue year basis of valuation refers to a
28 valuation basis under which the interest rate used to determine the
29 minimum valuation standard for the entire duration of the annuity or
30 guaranteed interest contract is the calendar year valuation interest
31 rate for the year of issue or year of purchase of the annuity or
32 guaranteed interest contract. The change in fund basis of valuation
33 refers to a valuation basis under which the interest rate used to
34 determine the minimum valuation standard applicable to each change in
35 the fund held under the annuity or guaranteed interest contract is the
36 calendar year valuation interest rate for the year of the change in the
37 fund.

38 (e) The reference interest rate referred to in subparagraphs (b)
39 and (c) of this subsection is defined as follows:

1 (i) For all life insurance, the lesser of the average over a period
2 of thirty-six months and the average over a period of twelve months,
3 ending on June 30th of the calendar year next preceding the year of
4 issue, of Moody's corporate bond yield average--monthly average
5 corporates, as published by Moody's Investors Service, Inc.

6 (ii) For single premium immediate annuities and for annuity
7 benefits involving life contingencies arising from other annuities with
8 cash settlement options and guaranteed interest contracts with cash
9 settlement options, the average over a period of twelve months, ending
10 on June 30th of the calendar year of issue or year of purchase of
11 Moody's corporate bond yield average--monthly average corporates, as
12 published by Moody's Investors Service, Inc.

13 (iii) For other annuities with cash settlement options and
14 guaranteed interest contracts with cash settlement options, valued on
15 a year of issue basis, except as stated in (ii) of this subparagraph,
16 with guarantee duration in excess of ten years, the lesser of the
17 average over a period of thirty-six months and the average over a
18 period of twelve months, ending on June 30th of the calendar year of
19 issue or purchase, of Moody's corporate bond yield average--monthly
20 average corporates, as published by Moody's Investors Service, Inc.

21 (iv) For other annuities with cash settlement options and
22 guaranteed interest contracts with cash settlement options, valued on
23 a year of issue basis, except as stated in (ii) of this subparagraph,
24 with guarantee duration of ten years or less, the average over a period
25 of twelve months, ending on June 30th of the calendar year of issue or
26 purchase, of Moody's corporate bond yield average--monthly average
27 corporates, as published by Moody's Investors Service, Inc.

28 (v) For other annuities with no cash settlement options and for
29 guaranteed interest contracts with no cash settlement options, the
30 average over a period of twelve months, ending on June 30th of the
31 calendar year of issue or purchase, of Moody's corporate bond yield
32 average--monthly average corporates, as published by Moody's Investors
33 Service, Inc.

34 (vi) For other annuities with cash settlement options and
35 guaranteed interest contracts with cash settlement options, valued on
36 a change in fund basis, except as stated in (ii) of this subparagraph,
37 the average over a period of twelve months, ending on June 30th of the
38 calendar year of the change in the fund, of Moody's corporate bond

1 yield average--monthly average corporates, as published by Moody's
2 Investors Service, Inc.

3 ~~((g))~~ (f) If Moody's corporate bond yield average--monthly
4 average corporates is no longer published by Moody's Investors Service,
5 Inc., or if the National Association of Insurance Commissioners
6 determines that Moody's corporate bond yield average--monthly average
7 corporates as published by Moody's Investors Service, Inc. is no longer
8 appropriate for the determination of the reference interest rate, then
9 an alternative method for determination of the reference interest rate,
10 which is adopted by the National Association of Insurance Commissioners
11 and approved by rule adopted by the commissioner, may be substituted.

12 **Sec. 86.** RCW 48.74.040 and 1982 1st ex.s. c 9 s 4 are each amended
13 to read as follows:

14 (1) Except as otherwise provided in RCW 48.74.040(2) ~~((and))~~,
15 48.74.070, and section 89 of this act, reserves according to the
16 commissioner's reserve valuation method, for the life insurance and
17 endowment benefits of policies providing for a uniform amount of
18 insurance and requiring the payment of uniform premiums, shall be the
19 excess, if any, of the present value, at the date of valuation, of such
20 future guaranteed benefits provided for by such policies, over the then
21 present value of any future modified net premiums therefor. The
22 modified net premiums for any such policy shall be such uniform
23 percentage of the respective contract premiums for such benefits that
24 the present value, at the date of issue of the policy, of all such
25 modified net premiums shall be equal to the sum of the then present
26 value of such benefits provided for by the policy and the excess of (a)
27 over (b), as follows:

28 (a) A net level annual premium equal to the present value, at the
29 date of issue, of such benefits provided for after the first policy
30 year, divided by the present value, at the date of issue, of an annuity
31 of one per annum payable on the first and each subsequent anniversary
32 of such policy on which a premium falls due: PROVIDED HOWEVER, That
33 such net level annual premium shall not exceed the net level annual
34 premium on the nineteen year premium whole life plan for insurance of
35 the same amount at an age one year higher than the age at issue of such
36 policy.

37 (b) A net one year term premium for such benefits provided for in
38 the first policy year: PROVIDED, That for any life insurance policy

1 issued on or after January 1, 1986, for which the contract premium in
2 the first policy year exceeds that of the second year and for which no
3 comparable additional benefit is provided in the first year for such
4 excess and which provides an endowment benefit or a cash surrender
5 value or a combination thereof in an amount greater than such excess
6 premium, the reserve according to the commissioner's reserve valuation
7 method as of any policy anniversary occurring on or before the assumed
8 ending date defined herein as the first policy anniversary on which the
9 sum of any endowment benefit and any cash surrender value then
10 available is greater than such excess premium shall, except as
11 otherwise provided in RCW 48.74.070, be the greater of the reserve as
12 of such policy anniversary calculated as described in the preceding
13 paragraph of this subsection and the reserve as of such policy
14 anniversary calculated as described in that paragraph, but with: (i)
15 The value defined in subparagraph (a) of that paragraph being reduced
16 by fifteen percent of the amount of such excess first year premium;
17 (ii) all present values of benefits and premiums being determined
18 without reference to premiums or benefits provided for by the policy
19 after the assumed ending date; (iii) the policy being assumed to mature
20 on such date as an endowment; and (iv) the cash surrender value
21 provided on such date being considered as an endowment benefit. In
22 making the above comparison the mortality and interest bases stated in
23 RCW 48.74.030(1) and (3) shall be used.

24 Reserves according to the commissioner's reserve valuation method
25 for life insurance policies providing for a varying amount of insurance
26 or requiring the payment of varying premiums, group annuity and pure
27 endowment contracts purchased under a retirement plan or plan of
28 deferred compensation established or maintained by an employer,
29 including a partnership or sole proprietorship, or by an employee
30 organization, or by both, other than a plan providing individual
31 retirement accounts or individual retirement annuities under section
32 408 of the Internal Revenue Code, as now or hereafter amended,
33 disability and accidental death benefits in all policies and contracts,
34 and all other benefits, except life insurance and endowment benefits in
35 life insurance policies and benefits provided by all other annuity and
36 pure endowment contracts, shall be calculated by a method consistent
37 with the principles of the preceding paragraphs of this subsection.

38 (2) This section shall apply to all annuity and pure endowment
39 contracts other than group annuity and pure endowment contracts

1 purchased under a retirement plan or plan of deferred compensation,
2 established or maintained by an employer, including a partnership or
3 sole proprietorship, or by an employee organization, or by both, other
4 than a plan providing individual retirement accounts or individual
5 retirement annuities under section 408 of the Internal Revenue Code, as
6 now or hereafter amended.

7 Reserves according to the commissioner's annuity reserve method for
8 benefits under annuity or pure endowment contracts, excluding any
9 disability and accidental death benefits in such contracts, shall be
10 the greatest of the respective excesses of the present values, at the
11 date of valuation, of the future guaranteed benefits, including
12 guaranteed nonforfeiture benefits, provided for by such contracts at
13 the end of each respective contract year, over the present value, at
14 the date of valuation, of any future valuation considerations derived
15 from future gross considerations, required by the terms of such
16 contract, that become payable prior to the end of such respective
17 contract year. The future guaranteed benefits shall be determined by
18 using the mortality table, if any, and the interest rate, or rates,
19 specified in such contracts for determining guaranteed benefits. The
20 valuation considerations are the portions of the respective gross
21 considerations applied under the terms of such contracts to determine
22 nonforfeiture values.

23 **Sec. 87.** RCW 48.74.050 and 1982 1st ex.s. c 9 s 5 are each amended
24 to read as follows:

25 (1) In no event may a company's aggregate reserves for all life
26 insurance policies, excluding disability and accidental death benefits,
27 issued on or after July 10, 1982, be less than the aggregate reserves
28 calculated in accordance with the methods set forth in RCW 48.74.040,
29 48.74.070, and 48.74.080 and the mortality table or tables and rate or
30 rates of interest used in calculating nonforfeiture benefits for such
31 policies.

32 (2) In no event may the aggregate reserves for all policies,
33 contracts, and benefits be less than the aggregate reserves determined
34 by the qualified actuary to be necessary to render the opinion required
35 under section 84 of this act.

36 **Sec. 88.** RCW 48.74.060 and 1982 1st ex.s. c 9 s 6 are each amended
37 to read as follows:

1 Reserves for all policies and contracts issued prior to the
2 operative date of this chapter, may be calculated, at the option of the
3 company, according to any standards which produce greater aggregate
4 reserves for all such policies and contracts than the minimum reserves
5 required by the laws in effect immediately prior to such date.

6 Reserves for any category of policies, contracts, or benefits as
7 established by the commissioner, issued on or after July 10, 1982, may
8 be calculated, at the option of the company, according to any standards
9 which produce greater aggregate reserves for such category than those
10 calculated according to the minimum standard herein provided, but the
11 rate or rates of interest used for policies and contracts, other than
12 annuity and pure endowment contracts, shall not be higher than the
13 corresponding rate or rates of interest used in calculating any
14 nonforfeiture benefits provided therein.

15 Any such company which at any time has adopted any standard of
16 valuation producing greater aggregate reserves than those calculated
17 according to the minimum standard herein provided may, with the
18 approval of the commissioner, adopt any lower standard of valuation,
19 but not lower than the minimum herein provided. For the purposes of
20 this section, the holding of additional reserves previously determined
21 by a qualified actuary to be necessary to render the opinion required
22 under section 84 of this act is not to be the adoption of a higher
23 standard of valuation.

24 NEW SECTION. Sec. 89. A new section is added to chapter 48.74 RCW
25 to read as follows:

26 The commissioner shall adopt rules containing the minimum standards
27 applicable to the valuation of disability insurance.

28 **Sec. 90.** RCW 48.92.010 and 1987 c 306 s 1 are each amended to read
29 as follows:

30 The purpose of this chapter is to regulate the formation and
31 operation of risk retention groups and purchasing groups in this state
32 formed pursuant to the provisions of the federal Liability Risk
33 Retention Act of 1986.

34 **Sec. 91.** RCW 48.92.020 and 1987 c 306 s 2 are each amended to read
35 as follows:

1 As used in this chapter, the following terms have the meanings
2 indicated unless the context clearly requires otherwise:

3 (1) "Commissioner" means the insurance commissioner of Washington
4 state or the commissioner, director, or superintendent of insurance in
5 any other state.

6 (2) "Completed operations liability" means liability arising out of
7 the installation, maintenance, or repair of any product at a site which
8 is not owned or controlled by:

9 (a) Any person who performs that work; or

10 (b) Any person who hires an independent contractor to perform that
11 work; but shall include liability for activities which are completed or
12 abandoned before the date of the occurrence giving rise to the
13 liability.

14 (3) "Domicile," for purposes of determining the state in which a
15 purchasing group is domiciled, means:

16 (a) For a corporation, the state in which the purchasing group is
17 incorporated; and

18 (b) For an unincorporated entity, the state of its principal place
19 of business.

20 (4) "Hazardous financial condition" means that, based on its
21 present or reasonably anticipated financial condition, a risk retention
22 group, although not yet financially impaired or insolvent, is unlikely
23 to be able:

24 (a) To meet obligations to policyholders with respect to known
25 claims and reasonably anticipated claims; or

26 (b) To pay other obligations in the normal course of business.

27 (5) "Insurance" means primary insurance, excess insurance,
28 reinsurance, surplus lines insurance, and any other arrangement for
29 shifting and distributing risk which is determined to be insurance
30 under the laws of this state.

31 (6) "Liability" means legal liability for damages including costs
32 of defense, legal costs and fees, and other claims expenses because of
33 injuries to other persons, damage to their property, or other damage or
34 loss to such other persons resulting from or arising out of:

35 (a) Any business, whether profit or nonprofit, trade, product,
36 services, including professional services, premises, or operations; or

37 (b) Any activity of any state or local government, or any agency or
38 political subdivision thereof.

1 "Liability" does not include personal risk liability and an
2 employer's liability with respect to its employees other than legal
3 liability under the federal Employers' Liability Act 45 U.S.C. 51 et
4 seq.

5 (7) "Personal risk liability" means liability for damages because
6 of injury to any person, damage to property, or other loss or damage
7 resulting from any personal, familial, or household responsibilities or
8 activities, rather than from responsibilities or activities referred to
9 in subsection (6) of this section.

10 (8) "Plan of operation or a feasibility study" means an analysis
11 which presents the expected activities and results of a risk retention
12 group including, at a minimum:

13 (a) Information sufficient to verify that its members are engaged
14 in businesses or activities similar or related with respect to the
15 liability to which the members are exposed by virtue of any related,
16 similar, or common business, trade, product, services, premises, or
17 operations;

18 (b) For each state in which it intends to operate, the coverages,
19 deductibles, coverage limits, rates, and rating classification systems
20 for each line of insurance the group intends to offer;

21 ~~((b))~~ (c) Historical and expected loss experience of the proposed
22 members and national experience of similar exposures;

23 ~~((e))~~ (d) Pro forma financial statements and projections;

24 ~~((d))~~ (e) Appropriate opinions by a qualified, independent,
25 casualty actuary, including a determination of minimum premium or
26 participation levels required to commence operations and to prevent a
27 hazardous financial condition;

28 ~~((e))~~ (f) Identification of management, underwriting and claims
29 procedures, marketing methods, managerial oversight methods, ((and))
30 investment policies, and reinsurance agreements; ((and

31 ~~(f))~~ (g) Identification of each state in which the risk retention
32 group has obtained, or sought to obtain, a charter and license, and a
33 description of its status in each of those states; and

34 (h) Such other matters as may be prescribed by the commissioner for
35 liability insurance companies authorized by the insurance laws of the
36 state.

37 (9) "Product liability" means liability for damages because of any
38 personal injury, death, emotional harm, consequential economic damage,
39 or property damage including damages resulting from the loss of use of

1 property arising out of the manufacture, design, importation,
2 distribution, packaging, labeling, lease, or sale of a product, but
3 does not include the liability of any person for those damages if the
4 product involved was in the possession of such a person when the
5 incident giving rise to the claim occurred.

6 (10) "Purchasing group" means any group which:

7 (a) Has as one of its purposes the purchase of liability insurance
8 on a group basis;

9 (b) Purchases the insurance only for its group members and only to
10 cover their similar or related liability exposure, as described in (c)
11 of this subsection;

12 (c) Is composed of members whose businesses or activities are
13 similar or related with respect to the liability to which members are
14 exposed by virtue of any related, similar, or common business, trade,
15 product, services, premises, or operations; and

16 (d) Is domiciled in any state.

17 (11) "Risk retention group" means any corporation or other limited
18 liability association (~~((formed under the laws of any state, Bermuda, or~~
19 ~~the Cayman Islands))~~):

20 (a) Whose primary activity consists of assuming and spreading all,
21 or any portion, of the liability exposure of its group members;

22 (b) Which is organized for the primary purpose of conducting the
23 activity described under (a) of this subsection;

24 (c) Which:

25 (i) Is chartered and licensed as a liability insurance company and
26 authorized to engage in the business of insurance under the laws of any
27 state; or

28 (ii) Before January 1, 1985, was chartered or licensed and
29 authorized to engage in the business of insurance under the laws of
30 Bermuda or the Cayman Islands and, before such date, had certified to
31 the insurance commissioner of at least one state that it satisfied the
32 capitalization requirements of such state, except that any such group
33 shall be considered to be a risk retention group only if it has been
34 engaged in business continuously since that date and only for the
35 purpose of continuing to provide insurance to cover product liability
36 or completed operations liability as the terms were defined in the
37 federal Product Liability Risk Retention Act of 1981 before the date of
38 the enactment of the federal Risk Retention Act of 1986;

1 (d) Which does not exclude any person from membership in the group
2 solely to provide for members of such a group a competitive advantage
3 over such a person;

4 (e) Which:

5 (i) Has as its ~~((members))~~ owners only persons who ~~((have an~~
6 ~~ownership interest in the group and which has as its owners only~~
7 ~~persons who are members))~~ comprise the membership of the risk retention
8 group and who are provided insurance by the risk retention group; or

9 (ii) Has as its sole ~~((member and sole))~~ owner an organization
10 ~~((which is owned by persons who are provided insurance by the risk~~
11 ~~retention group))~~ that has:

12 (A) As its members only persons who comprise the membership of the
13 risk retention group; and

14 (B) As its owners only persons who comprise the membership of the
15 risk retention group and who are provided insurance by the group;

16 (f) Whose members are engaged in businesses or activities similar
17 or related with respect to the liability of which such members are
18 exposed by virtue of any related, similar, or common business trade,
19 product, services, premises, or operations;

20 (g) Whose activities do not include the provision of insurance
21 other than:

22 (i) Liability insurance for assuming and spreading all or any
23 portion of the liability of its group members; and

24 (ii) Reinsurance with respect to the liability of any other risk
25 retention group or any members of such other group which is engaged in
26 businesses or activities so that the group or member meets the
27 requirement described in (f) of this subsection from membership in the
28 risk retention group which provides such reinsurance; and

29 (h) The name of which includes the phrase "risk retention group."

30 (12) "State" means any state of the United States or the District
31 of Columbia.

32 **Sec. 92.** RCW 48.92.030 and 1987 c 306 s 3 are each amended to read
33 as follows:

34 (1) A risk retention group seeking to be chartered in this state
35 must be chartered and licensed as a liability insurance company
36 authorized by the insurance laws of this state and, except as provided
37 elsewhere in this chapter, must comply with all of the laws, rules,
38 regulations, and requirements applicable to the insurers chartered and

1 licensed in this state and with RCW 48.92.040 to the extent the
2 requirements are not a limitation on laws, rules, regulations, or
3 requirements of this state.

4 (2) A risk retention group chartered in this state shall file with
5 the department and the National Association of Insurance Commissioners
6 an annual statement in a form prescribed by the National Association of
7 Insurance Commissioners, and in electronic form if required by the
8 commissioner, and completed in accordance with its instructions and the
9 National Association of Insurance Commissioners accounting practices
10 and procedures manual.

11 (3) Before it may offer insurance in any state, each domestic risk
12 retention group shall also submit for approval to the insurance
13 commissioner of this state a plan of operation or a feasibility study
14 ((and revisions of the plan or study if the group intends to offer any
15 additional lines of liability insurance)). The risk retention group
16 shall submit an appropriate revision in the event of a subsequent
17 material change in an item of the plan of operation or feasibility
18 study, within ten days of the change. The group may not offer any
19 additional kinds of liability insurance, in this state or in any other
20 state, until a revision of the plan or study is approved by the
21 commissioner.

22 (4) At the time of filing its application for charter, the risk
23 retention group shall provide to the commissioner in summary form the
24 following information: The identity of the initial members of the
25 group; the identify of those individuals who organized the group or who
26 will provide administrative services or otherwise influence or control
27 the activities of the group; the amount and nature of the initial
28 capitalization; the coverages to be afforded; and the states in which
29 the group intends to operate. Upon receipt of this information, the
30 commissioner shall forward the information to the National Association
31 of Insurance Commissioners. Providing notification to the National
32 Association of Insurance Commissioners is in addition to and is not
33 sufficient to satisfy the requirements of RCW 48.92.040 or this
34 chapter.

35 **Sec. 93.** RCW 48.92.040 and 1987 c 306 s 4 are each amended to read
36 as follows:

37 Risk retention groups chartered and licensed in states other than
38 this state and seeking to do business as a risk retention group in this

1 state (~~must observe and abide by~~) shall comply with the laws of this
2 state as follows:

3 (1) Before offering insurance in this state, a risk retention group
4 shall submit to the commissioner on a form prescribed by the National
5 Association of Insurance Commissioners:

6 (a) A statement identifying the state or states in which the risk
7 retention group is chartered and licensed as a liability insurance
8 company, date of chartering, its principal place of business, and any
9 other information including information on its membership, as the
10 commissioner of this state may require to verify that the risk
11 retention group is qualified under RCW 48.92.020(11);

12 (b) A copy of its plan of operations or a feasibility study and
13 revisions of the plan or study submitted to its state of domicile:
14 PROVIDED, HOWEVER, That the provision relating to the submission of a
15 plan of operation or a feasibility study shall not apply with respect
16 to any line or classification of liability insurance which: (i) Was
17 defined in the federal Product Liability Risk Retention Act of 1981
18 before October 27, 1986; and (ii) was offered before that date by any
19 risk retention group which had been chartered and operating for not
20 less than three years before that date; (~~and~~)

21 (c) The risk retention group shall submit a copy of any revision to
22 its plan of operation or feasibility study required under RCW
23 48.92.030(3) at the same time that the revision is submitted to the
24 commissioner of its chartering state; and

25 (d) A statement of registration which designates the commissioner
26 as its agent for the purpose of receiving service of legal documents or
27 process.

28 (2) Any risk retention group doing business in this state shall
29 submit to the commissioner:

30 (a) A copy of the group's financial statement submitted to its
31 state of domicile, which shall be certified by an independent public
32 accountant and contain a statement of opinion on loss and loss
33 adjustment expense reserves made by a member of the American academy of
34 actuaries or a qualified loss reserve specialist under criteria
35 established by the National Association of Insurance Commissioners;

36 (b) A copy of each examination of the risk retention group as
37 certified by the commissioner or public official conducting the
38 examination;

1 (c) Upon request by the commissioner, a copy of any information or
2 document pertaining to an outside audit performed with respect to the
3 risk retention group; and

4 (d) Any information as may be required to verify its continuing
5 qualification as a risk retention group under RCW 48.92.020(11).

6 ~~(3)(a) ((All premiums paid for coverages within this state to risk~~
7 ~~retention groups shall be subject to taxation at the same rate and~~
8 ~~subject to the same interest, fines, and penalties for nonpayment as~~
9 ~~that applicable to foreign admitted insurers))~~ A risk retention group
10 is liable for the payment of premium taxes and taxes on premiums of
11 direct business for risks resident or located within this state, and
12 shall report on or before March 1st of each year to the commissioner
13 the direct premiums written for risks resident or located within this
14 state. The risk retention group is subject to taxation, and applicable
15 fines and penalties related thereto, on the same basis as a foreign
16 admitted insurer.

17 (b) To the extent agents or brokers are utilized under RCW
18 48.92.120 or otherwise, they shall report ~~((and pay the taxes for the~~
19 ~~premiums for risks which they))~~ to the commissioner the premiums for
20 direct business for risks resident or located within this state that
21 the licensees have placed with or on behalf of a risk retention group
22 not chartered in this state.

23 (c) To the extent agents or brokers are ~~((not utilized or fail to~~
24 ~~pay the tax, each risk retention group shall pay the tax for risks~~
25 ~~insured within the state. Each risk retention group shall report all~~
26 ~~premiums paid to it for risks insured within the state))~~ used under RCW
27 48.92.120 or otherwise, an agent or broker shall keep a complete and
28 separate record of all policies procured from each risk retention
29 group. The record is open to examination by the commissioner, as
30 provided in chapter 48.03 RCW. These records must include, for each
31 policy and each kind of insurance provided thereunder, the following:

32 (i) The limit of liability;

33 (ii) The time period covered;

34 (iii) The effective date;

35 (iv) The name of the risk retention group that issued the policy;

36 (v) The gross premium charged; and

37 (vi) The amount of return premiums, if any.

38 (4) Any risk retention group, its agents and representatives, shall
39 be subject to any and all unfair claims settlement practices statutes

1 and regulations specifically denominated by the commissioner as unfair
2 claims settlement practices regulations.

3 (5) Any risk retention group, its agents and representatives, shall
4 be subject to the provisions of chapter 48.30 RCW pertaining to
5 deceptive, false, or fraudulent acts or practices. However, if the
6 commissioner seeks an injunction regarding such conduct, the injunction
7 must be obtained from a court of competent jurisdiction.

8 (6) Any risk retention group must submit to an examination by the
9 commissioner to determine its financial condition if the commissioner
10 of the jurisdiction in which the group is chartered has not initiated
11 an examination or does not initiate an examination within sixty days
12 after a request by the commissioner of this state. The examination
13 shall be coordinated to avoid unjustified repetition and conducted in
14 an expeditious manner and in accordance with the National Association
15 of Insurance Commissioners' examiner handbook.

16 (7) ~~((Any))~~ Every application form for insurance from a risk
17 retention group and every policy issued by a risk retention group shall
18 contain in ten-point type on the front page and the declaration page,
19 the following notice:

20 NOTICE

21 This policy is issued by your risk retention group. Your risk
22 retention group may not be subject to all of the insurance laws
23 and regulations of your state. State insurance insolvency
24 guaranty funds are not available for your risk retention group.

25 (8) The following acts by a risk retention group are hereby
26 prohibited:

27 (a) The solicitation or sale of insurance by a risk retention group
28 to any person who is not eligible for membership in that group; and

29 (b) The solicitation or sale of insurance by, or operation of, a
30 risk retention group that is in a hazardous financial condition or is
31 financially impaired.

32 (9) No risk retention group shall be allowed to do business in this
33 state if an insurance company is directly or indirectly a member or
34 owner of the risk retention group, other than in the case of a risk
35 retention group all of whose members are insurance companies.

36 ~~((No risk retention group may offer insurance policy coverage~~
37 ~~prohibited by Title 48 RCW or declared unlawful by the highest court of~~
38 ~~this state))~~ The terms of an insurance policy issued by a risk

1 retention group may not provide, or be construed to provide, coverage
2 prohibited generally by statute of this state or declared unlawful by
3 the highest court of this state.

4 (11) A risk retention group not chartered in this state and doing
5 business in this state shall comply with a lawful order issued in a
6 voluntary dissolution proceeding or in a delinquency proceeding
7 commenced by a state insurance commissioner if there has been a finding
8 of financial impairment after an examination under ~~((RCW 48.92.040(6))~~)
9 subsection (6) of this section.

10 **Sec. 94.** RCW 48.92.050 and 1987 c 306 s 5 are each amended to read
11 as follows:

12 (1) No risk retention group shall be permitted to join or
13 contribute financially to any insurance insolvency guaranty fund, or
14 similar mechanism, in this state, nor shall any risk retention group,
15 or its insureds or claimants against its insureds, receive any benefit
16 from any such fund for claims arising ~~((out of the operations of the))~~
17 under the insurance policies issued by a risk retention group.

18 (2) A risk retention group shall participate in this state's joint
19 underwriting associations and mandatory liability pools or plans
20 required by the commissioners.

21 (3) When a purchasing group obtains insurance covering its members'
22 risks from an insurer not authorized in this state or a risk retention
23 group, no such risks, wherever resident or located, are covered by an
24 insurance guaranty fund or similar mechanism in this state.

25 (4) When a purchasing group obtains insurance covering its members'
26 risks from an authorized insurer, only risks resident or located in
27 this state are covered by the state guaranty fund established in
28 chapter 48.32 RCW.

29 **Sec. 95.** RCW 48.92.070 and 1987 c 306 s 7 are each amended to read
30 as follows:

31 ~~((Any purchasing group meeting the criteria established under the~~
32 ~~provisions of the federal Liability Risk Retention Act of 1986 shall be~~
33 ~~exempt from any law of this state relating to the creation of groups~~
34 ~~for the purchase of insurance, prohibition of group purchasing, or any~~
35 ~~law that would discriminate against a purchasing group or its members.~~
36 ~~In addition, an insurer shall be exempt from any law of this state~~
37 ~~which prohibits providing, or offering to provide, to a purchasing~~

1 ~~group or its members advantages based on their loss and expense~~
2 ~~experience not afforded to other persons with respect to rates, policy~~
3 ~~forms, coverages, or other matters. — A purchasing group shall be~~
4 ~~subject to all other applicable laws of this state.)~~) A purchasing
5 group and its insurer or insurers are subject to all applicable laws of
6 this state, except that a purchasing group and its insurer or insurers
7 are exempt, in regard to liability insurance for the purchasing group,
8 from any law that:

9 (1) Prohibits the establishment of a purchasing group;

10 (2) Makes it unlawful for an insurer to provide or offer to provide
11 insurance on a basis providing, to a purchasing group or its members,
12 advantages based on their loss and expense experience not afforded to
13 other persons with respect to rates, policy forms, coverages, or other
14 matters;

15 (3) Prohibits a purchasing group or its members from purchasing
16 insurance on a group basis described in subsection (2) of this section;

17 (4) Prohibits a purchasing group from obtaining insurance on a
18 group basis because the group has not been in existence for a minimum
19 period of time or because any member has not belonged to the group for
20 a minimum period of time;

21 (5) Requires that a purchasing group must have a minimum number of
22 members, common ownership or affiliation, or certain legal form;

23 (6) Requires that a certain percentage of a purchasing group must
24 obtain insurance on a group basis;

25 (7) Otherwise discriminates against a purchasing group or any of
26 its members.

27 **Sec. 96.** RCW 48.92.080 and 1987 c 306 s 8 are each amended to read
28 as follows:

29 (1) A purchasing group which intends to do business in this state
30 shall furnish, before doing business, notice to the commissioner, on
31 forms prescribed by the National Association of Insurance Commissioners
32 which shall:

33 (a) Identify the state in which the group is domiciled;

34 (b) Identify all other states in which the group intends to do
35 business;

36 (c) Specify the lines and classifications of liability insurance
37 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. 97.** 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. 98.** 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. 99.** 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. 100.** 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. 101.** 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. 102.** 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. 103.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 48.07.090 and 1975 1st ex.s. c 266 s 4, 1953 c 197 s 3, &
4 1947 c 79 s .07.09;

5 (2) RCW 48.31A.005 and 1983 c 46 s 1;

6 (3) RCW 48.31A.010 and 1971 ex.s. c 13 s 3;

7 (4) RCW 48.31A.020 and 1985 c 55 s 1, 1983 c 46 s 2, & 1971 ex.s.
8 c 13 s 4;

9 (5) RCW 48.31A.030 and 1983 c 46 s 3 & 1971 ex.s. c 13 s 5;

10 (6) RCW 48.31A.040 and 1971 ex.s. c 13 s 6;

11 (7) RCW 48.31A.050 and 1985 c 55 s 2, 1983 c 46 s 4, & 1971 ex.s.
12 c 13 s 7;

13 (8) RCW 48.31A.055 and 1985 c 55 s 3;

14 (9) RCW 48.31A.060 and 1971 ex.s. c 13 s 8;

15 (10) RCW 48.31A.070 and 1971 ex.s. c 13 s 9;

16 (11) RCW 48.31A.080 and 1971 ex.s. c 13 s 10;

17 (12) RCW 48.31A.090 and 1971 ex.s. c 13 s 11;

18 (13) RCW 48.31A.100 and 1971 ex.s. c 13 s 12;

19 (14) RCW 48.31A.110 and 1971 ex.s. c 13 s 13;

20 (15) RCW 48.31A.120 and 1971 ex.s. c 13 s 14;

21 (16) RCW 48.31A.130 and 1971 ex.s. c 13 s 15; and

22 (17) RCW 48.31A.900 and 1971 ex.s. c 13 s 17.

23 NEW SECTION. **Sec. 104.** The insurance commissioner may take such
24 steps as are necessary to ensure that this act is implemented on its
25 effective date.

26 NEW SECTION. **Sec. 105.** Sections 1 through 15 of this act shall
27 constitute a new chapter in Title 48 RCW.

28 NEW SECTION. **Sec. 106.** Sections 16 through 21 of this act shall
29 constitute a new chapter in Title 48 RCW.

30 NEW SECTION. **Sec. 107.** Sections 22 through 33 of this act shall
31 constitute a new chapter in Title 48 RCW.

32 NEW SECTION. **Sec. 108.** Sections 34 through 42 of this act shall
33 constitute a new chapter in Title 48 RCW.

1 NEW SECTION. **Sec. 109.** Sections 57 through 73 of this act are
2 each added to chapter 48.31 RCW.

3 NEW SECTION. **Sec. 110.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- END ---