

HOUSE BILL REPORT

HB 1565

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to business continuity plans for domestic insurers.

Brief Description: Expanding the scope of business continuity plans for domestic insurers.

Sponsors: Representatives Kirby, Kelley, Williams and Simpson; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/29/09, 2/17/09 [DPS].

Brief Summary of Substitute Bill

- Expands the type of emergencies requiring emergency preparedness planning.
- Expands the category of domestic entities that are subject to emergencies requiring preparedness planning.
- Grants the Insurance Commissioner the authority to adopt rules.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach, Santos and Simpson.

Staff: Jon Hedegard (786-7127)

Background:

"Insurer" is defined in the insurance code as "every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals that join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-

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insuring against liability claims, including medical liability, through a contributing trust fund are not an "insurer" under this code. Two or more local governmental entities, under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool are not an "insurer" under this code."

Under the insurance code, insurers formed under the laws of Washington ("domestic insurers") must adopt procedures to continue to operate in a national emergency. The board of directors of a domestic insurer may adopt emergency bylaws to enable the insurers to reasonably operate in a national emergency. If emergency bylaws are not adopted by a domestic insurer, the following provisions are applicable:

- Three directors is a quorum for the transaction of business at a board meeting.
- A vacancy in the board may be filled by a majority of the remaining directors or by a sole remaining director.
- If there are no surviving directors, but at least three vice presidents of an insurer, the three vice presidents with the longest terms of service are the directors and possess all of the powers of the previous board. By majority vote, the board of directors may elect other directors.
- If there are not at least three surviving vice presidents, the Insurance Commissioner (Commissioner) or designated person exercising the powers of the Commissioner must appoint three persons as directors and these persons by majority vote may elect other directors.

The board of directors of a domestic insurer may provide that in the event of a national emergency:

- There is a list of succession in the event of the death or incapacity of the president, the secretary, or the treasurer of the insurer. The list shall establish the order of succession by name or title and may prescribe the conditions under which the powers of the office shall be exercised.
- The principal office and place of business of the insurer is at a named or described location. Alternate locations and establish an order of preference may be provided.

Summary of Substitute Bill:

The existing provisions of law that apply to business continuity for a domestic insurer in a national emergency are extended to:

- local and state emergencies;
- significant business disruptions; and
- issuers (a group that encompasses domestic insurers, domestic fraternal benefit societies, domestic certified health plans, domestic health maintenance organizations, and domestic health care service contractors).

The Commissioner is granted the authority to adopt rules regarding business continuity standards after considering relevant standards adopted by the National Association of Insurance Commissioners, other states, and other regulatory authorities that regulate financial institutions. The effective date is delayed until January 1, 2011.

Substitute Bill Compared to Original Bill:

The substitute bill deletes the provisions that required issuers to:

- adopt specific elements in their business continuity plan or document the reason for not including a specific element;
- make the plan available to the Commissioner upon request;
- update its plan as necessary;
- conduct an annual review and test of the plan;
- describe senior management roles and responsibilities;
- designate a person responsible for approving the plan and conducting an annual review and test; and
- disclose certain details of the plan to its policyholders. The Commissioner may adopt rules after reviewing other business continuity standards.

The effective date is delayed until January 1, 2011.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect January 1, 2011.

Staff Summary of Public Testimony:

(In support) The Office of the Insurance Commissioner (OIC) discussed this issue during the interim. The need for this bill arose after the OIC examined health carriers and became concerned about their possibly insufficient disaster planning. This is not a result of past problems. It is a preventative measure. In developing the bill, the OIC reviewed the model act and guidelines from the National Association of Insurance Commissioners. The OIC only recently became aware of some stakeholder concerns. We will work with the industry to try to resolve those issues.

(In support with concerns) There are a couple of technical issues. Domestic property and casualty insurers already have these requirements. It appears that those existing requirements may be expanded beyond current practices. Additionally, the requirement that an insurer notify every policyholder is unnecessary and very expensive. Insurers are happy to file their plan with the OIC. Any interested party could then access it via the OIC. To require a mailing to every policyholder seems to be an unnecessary burden on Washington-based insurers. These plans are detailed and ready to become operational if triggered. There are some concerns that these new requirements would make our current efficient and operational plans less functional. Some domestic insurers have tens of thousands of policyholders. It

would be extremely costly to print and mail a plan to each person. Many of the recipients would not read or want an emergency business plan of their insurer. Insurers would be happy to work with the OIC on a method of providing this information in some manner that is less costly.

(Opposed) None.

Persons Testifying: (In support) Representative Kirby, prime sponsor; and Drew Bouton, Office of the Insurance Commissioner.

(In support with concerns) Jean Leonard, Washington Insurers; Gary Strannigan, Safeco; and Mel Sorensen, Property Casualty Insurer Associates.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.