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**HOUSE BILL 2291**

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

**By** Representatives Walen and Wylie; by request of Insurance Commissioner

AN ACT Relating to independently procured insurance and applying the state insurance premium tax to such insurance for both in-state and out-of-state risk; amending RCW 48.15.010 and 48.14.095; adding new sections to chapter 48.15 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The ability to independently procure insurance in this state is limited to persons who qualify as an exempt commercial purchaser, as defined in RCW 48.15.010.

(2) Prior to independently procuring insurance in this state, a person must establish that they qualify as an exempt commercial purchaser. To establish that a person qualifies as an exempt commercial purchaser, the person must file a form, in the format prescribed by the commissioner, attesting that the person qualifies as an exempt commercial purchaser and providing additional information as required by the commissioner. The commissioner may request records to confirm that the person qualifies as an exempt commercial purchaser.

(3) Every exempt commercial purchaser whose home state is Washington state and who procures, causes to be procured, continues, or renews insurance with an unauthorized insurer, including a person or self-insurer who procures or continues excess loss, catastrophe, or other insurance, upon a subject of insurance that is resident, located, or to be performed in this state, other than insurance lawfully procured through a surplus lines broker under this chapter, must within sixty days after the date the insurance was bound or the effective date of the insurance, whichever is later, file a report with the commissioner in a form prescribed by the commissioner. The report must show the name and address of the exempt commercial purchaser, name and address of the unauthorized insurer, a general description of the coverage, the binding or effective date, the policy number, the amount of premium currently charged, and additional pertinent information required by the commissioner. The exempt commercial purchaser must attach the policy declaration pages to the report.

(4) Insurance issued by an unauthorized insurer on risks or property resident, situated, or to be performed in this state, or on a person who is a resident of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(5) Persons who qualify as exempt commercial purchasers may only independently procure unauthorized insurance that is properly classified as property insurance under RCW 48.11.040 or general casualty insurance under RCW 48.11.070.

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

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

(a) Aggregate of net premiums; and

(b) Additional information as required by the commissioner.

(3) This section does not apply to unauthorized property and casualty insurance independently procured by an insured when the insured's home state is a state other than this state.

NEW SECTION. **Sec.**  (1) On or before the first day of March of each year, an exempt commercial purchaser must remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on independently procured insurance subject to tax transacted by the exempt commercial purchaser during the preceding calendar year, as shown by the annual statement filed with the commissioner, and at the same rates as are applicable to the premiums of authorized foreign insurers under this code. The tax when collected must be credited to the general fund.

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

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

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

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

(2) If an exempt commercial purchaser fails to file the annual statement and fails to remit the tax provided by section 3 of this act, by the last day of the month in which the tax becomes due, the exempt commercial purchaser must pay the penalties and interest provided in RCW 48.14.060. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must be paid to the state treasurer and credited to the general fund.

NEW SECTION. **Sec.**  The commissioner may adopt rules as necessary to implement this act.

**Sec.**  RCW 48.15.010 and 2011 c 31 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means any group of entities that are all affiliated.

(3) With respect to an insured, an entity has "control" over another entity when:

(a) The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of the other entity; or

(b) The entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(4)(a) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as the amount is adjusted under (b) of this subsection;

(B) The person generates annual revenues in excess of fifty million dollars, as the amount is adjusted under (b) of this subsection;

(C) The person employs more than five hundred full-time or full-time equivalent employees per insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as the amount is adjusted under (b) of this subsection; or

(E) The person is a municipality with a population in excess of fifty thousand persons.

(b) The amounts in (a)(iii)(A), (B), and (D) of this subsection must be adjusted to reflect the percentage change for the five-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

(c) For the purpose of this subsection, "commercial insurance" means property and casualty insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity.

(5) "Independently procured insurance" means insurance procured directly by a qualified exempt commercial purchaser from an unauthorized insurer.

(6)(a) Except as provided in (b) of this subsection, "insured's home state" means, with respect to an insured:

(i) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) If one hundred percent of the insured risk is located out of the state referred to in this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single insurance contract issued by an unauthorized insurer, the term "insured's home state" means the insured's home state, as determined pursuant to (a) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(c) To determine the home state of the insured, the principal place of business is the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

((~~(6)~~)) (7) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) The person is an employee of, or third-party consultant retained by, the commercial policyholder;

(b) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance; and

(c) The person:

(i)(A) Has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(B)(I) Has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(II) Has one of the following designations:

(AA) A designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(BB) A designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(CC) A designation as ((~~[a]~~)) a certified risk manager issued by the national alliance for insurance education and research;

(DD) A designation as a RIMS fellow issued by the global risk management institute; or

(EE) Any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(ii)(A) Has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(B) Has any one of the designations specified in (c)(i)(B)(II)(AA) through (EE) of this subsection;

(iii) Has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) Has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

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

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

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

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

(4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

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

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

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

(8) This section does not apply to premiums on insurance independently procured by an exempt commercial purchaser under sections 1 through 4 of this act.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act are each added to chapter 48.15 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2021.

**--- END ---**