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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

Prefiled 01/06/20. Read first time 01/13/20. Referred to Committee on Consumer Protection & Business.

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

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

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

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

19 (3) Every exempt commercial purchaser whose home state is  
20 Washington state and who procures, causes to be procured, continues,  
21 or renews insurance with an unauthorized insurer, including a person

1 or self-insurer who procures or continues excess loss, catastrophe,  
2 or other insurance, upon a subject of insurance that is resident,  
3 located, or to be performed in this state, other than insurance  
4 lawfully procured through a surplus lines broker under this chapter,  
5 must within sixty days after the date the insurance was bound or the  
6 effective date of the insurance, whichever is later, file a report  
7 with the commissioner in a form prescribed by the commissioner. The  
8 report must show the name and address of the exempt commercial  
9 purchaser, name and address of the unauthorized insurer, a general  
10 description of the coverage, the binding or effective date, the  
11 policy number, the amount of premium currently charged, and  
12 additional pertinent information required by the commissioner. The  
13 exempt commercial purchaser must attach the policy declaration pages  
14 to the report.

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

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

25 NEW SECTION. **Sec. 2.** (1) An exempt commercial purchaser must,  
26 on or before the first day of March of each year, file with the  
27 commissioner a verified statement of all independently procured  
28 insurance transacted during the preceding calendar year.

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

31 (a) Aggregate of net premiums; and

32 (b) Additional information as required by the commissioner.

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

36 NEW SECTION. **Sec. 3.** (1) On or before the first day of March of  
37 each year, an exempt commercial purchaser must remit to the state  
38 treasurer through the commissioner a tax on the premiums, exclusive

1 of sums collected to cover federal and state taxes and examination  
2 fees, on independently procured insurance subject to tax transacted  
3 by the exempt commercial purchaser during the preceding calendar  
4 year, as shown by the annual statement filed with the commissioner,  
5 and at the same rates as are applicable to the premiums of authorized  
6 foreign insurers under this code. The tax when collected must be  
7 credited to the general fund.

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

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

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

22 NEW SECTION. **Sec. 4.** (1) An exempt commercial purchaser who  
23 fails to file a report as required by the commissioner in section  
24 1(3) of this act is subject to a one thousand dollar fine, per  
25 violation.

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

35 NEW SECTION. **Sec. 5.** The commissioner may adopt rules as  
36 necessary to implement this act.

1       **Sec. 6.** RCW 48.15.010 and 2011 c 31 s 1 are each amended to read  
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 ~~((6))~~ (7) "Qualified risk manager" means, with respect to a  
32 policyholder of commercial insurance, a person who meets all of the  
33 following requirements:

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

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

39 (c) The person:

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

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

8 (II) Has one of the following designations:

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

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

14 (CC) A designation as (~~(f-a)~~) a certified risk manager issued by  
15 the national alliance for insurance education and research;

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

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

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

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

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

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

33 **Sec. 7.** RCW 48.14.095 and 2008 c 217 s 8 are each amended to  
34 read as follows:

35 (1) This section applies to any insurer or taxpayer, as defined  
36 in RCW 48.14.0201, violating or failing to comply with RCW  
37 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or  
38 48.46.027(1).

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 8.** Sections 1 through 4 of this act are each  
33 added to chapter 48.15 RCW.

34 NEW SECTION. **Sec. 9.** This act takes effect January 1, 2021.

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