AN ACT Relating to captive insurance; amending RCW 48.14.020, 48.14.095, 48.15.160, 82.04.320, and 48.14.090; adding a new chapter to Title 48 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that creating a framework for Washington private entities and public institutions of higher education to manage their risks through captive insurers will facilitate the growth and safety of those entities and protect the public interest. The legislature further finds that captive insurance promotes prudent risk management and provides access to insurance and reinsurance markets that may not be available to these Washington entities otherwise. The legislature believes that encouraging the use of captive insurance will support those who rely upon the strength and stability of employers in this state.

The legislature does not intend by this act to make Washington a captive domicile state. Rather, the legislature is establishing a framework for registration by captive insurers that insure Washington-based entities and are licensed by the jurisdictions in which they are domiciled.
NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" means an entity directly or indirectly controlling, controlled by, or under common control with another entity, such as a parent or a subsidiary corporation. "Affiliate" also means any person that holds an insured interest because that person has or had an employment or sales contract with an insured person.

(2) "Captive owner" means one of the following:
   (a) An entity that is organized under Title 23B, 24, or 25 RCW, or analogous provisions of the law of another state or territory; or
   (b) A public institution of higher education.

(3) "Casualty insurance" has the same meaning as "general casualty insurance" as defined in RCW 48.11.070.

(4) "Control" means possession of the power to direct the management and policies of an entity through ownership of voting securities, by contract, or otherwise.

(5) "Eligible captive insurer" means an insurance company with the following characteristics:
   (a) It is wholly or partially owned by a captive owner;
   (b) It insures risks of the captive owner, the captive owner's other affiliates, or both;
   (c) One or more of its insureds have their principal place of business in Washington;
   (d) It has assets that exceed its liabilities by at least $1,000,000 and has the ability to pay its debts as they come due, both as verified by audited financial statements prepared by an independent certified accountant; and
   (e) It is licensed as a captive insurer by the jurisdiction in which it is domiciled.

(6) "Property insurance" has the same meaning as in RCW 48.11.040.

(7) "Public institution of higher education" means an institution of higher education as defined in RCW 28B.10.016.

NEW SECTION. Sec. 3. (1) Within 120 days after the effective date of this section or, if later, within 120 days after first issuing a policy that covers Washington risks, an entity acting as an eligible captive insurer must register with the commissioner.
(2) The commissioner will approve an eligible captive insurer's registration if the commissioner determines that the eligible captive insurer has sufficiently demonstrated:

(a)(i) That its assets exceed its liabilities by at least $1,000,000 and it has the ability to pay its debts as they come due, both as verified by audited financial statements prepared by an independent certified accountant; and

(ii) That it is in good standing in its jurisdiction of domicile; and

(b) The eligible captive insurer has paid a fee of $2,500.

(3) The commissioner may request additional documentation and information if needed to show that these requirements have been met.

(4) The commissioner may deny registration for any eligible captive insurer that fails to meet the requirements in subsections (2) and (3) of this section.

(5) A registered captive insurer may renew its certificate of registration for successive periods of 12 months each by, for each period, meeting the requirements of subsections (2)(a) and (3) of this section and paying a renewal fee in an amount set by the commissioner not to exceed $2,500.

(6) A registered eligible captive insurer may provide only property and casualty insurance and may provide such insurance to a captive owner, to the captive owner's other affiliates, or both. A registered eligible captive insurer may assume risks from other insurers as a reinsurer without regard to the limitations in the preceding sentence.

(7) A registered eligible captive insurer may insure risks of its affiliates and obtain or provide reinsurance for ceded or assumed risks insured in this state or elsewhere.

NEW SECTION. Sec. 4. (1) On or before the first day of March of each year, a registered eligible captive insurer must remit to the state treasurer through the commissioner a tax in the amount of two percent of the premiums, exclusive of returned premiums and sums collected to cover federal and state taxes and examination fees, for insurance directly procured by and provided to its parent or another affiliate for Washington risks during the preceding calendar year. The tax when collected must be credited to the general fund.

(2) For the purposes of this section, "Washington risks" means the share of risk covered by the premiums that is allocable to this...
state, based on where the underlying risks are located or where the losses or injuries giving rise to covered claims arise. A registered eligible captive insurer may use any reasonable method of determining such an allocation, including actuarial analysis or use of a proxy such as sales, property value, or payroll. Whether paid directly or by reimbursement, neither the timing nor the nature of a captive insurer's payment may be deemed to reflect, create, or constitute Washington risks.

(3) The registered eligible captive insurer must share its methodology and relevant analysis in determining its allocation with the commissioner.

(4) A registered eligible captive insurer is not liable for premium tax on moneys received as a reinsurer or on insurance placed through a surplus lines broker or other intermediary that collects and remits premium tax.

(5) If a registered eligible captive insurer fails to remit the tax provided by this section by the last day of the month in which the tax becomes due, the registered eligible captive insurer must pay the tax and 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.

(6) Taxes on premiums are due under this section from an eligible captive insurer for any period after January 1, 2011, if not previously remitted to the commissioner, and further provided that all such taxes must be limited to an eligible captive insurer's Washington risks. Taxes due under this subsection for periods before July 1, 2021, are not subject to the penalties or interest provided in RCW 48.14.060. For periods beginning July 1, 2021, a registered eligible captive insurer is subject to the sanctions in subsection (5) of this section.

NEW SECTION. Sec. 5. (1) The commissioner is authorized to make use of any of the powers established under Title 48 RCW to enforce the laws of this state. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the...
commissioner can rely on the procedural law and regulations of the
state. An eligible captive insurer that violates any provision of
this chapter after its effective date will be subject to the fines
and penalties applicable to authorized insurers generally, including
revocation of its registration, suspension of registration, and
refusal to renew registration.

(2) An eligible captive insurer that fails to register under this
act is acting as an unlawful, unauthorized insurer and is subject to
the fines and penalties applicable to unlawful, unauthorized insurers
generally.

**NEW SECTION.** Sec. 6. The commissioner may adopt rules as
necessary to implement this act.

Sec. 7. RCW 48.14.020 and 2016 c 133 s 1 are each amended to
read as follows:

(1) Subject to other provisions of this chapter, each authorized
insurer except title insurers and registered eligible captive
insurers as defined in section 2 of this act shall on or before the
first day of March of each year pay to the state treasurer through
the commissioner's office a tax on premiums. Except as provided in
subsection (3) of this section, such tax shall be in the amount of
two percent of all premiums, excluding amounts returned to or the
amount of reductions in premiums allowed to holders of industrial
life policies for payment of premiums directly to an office of the
insurer, collected or received by the insurer under RCW 48.14.090
during the preceding calendar year other than ocean marine and
foreign trade insurances, after deducting premiums paid to
policyholders as returned premiums, upon risks or property resident,
situated, or to be performed in this state. For tax purposes, the
reporting of premiums shall be on a written basis or on a paid-for
basis consistent with the basis required by the annual statement. For
the purposes of this section the consideration received by an insurer
for the granting of an annuity shall not be deemed to be a premium.

(2)(a) The taxes imposed in this section do not apply to amounts
received by any life and disability insurer for health care services
included within the definition of practice of dentistry under RCW
18.32.020 except amounts received for pediatric oral services that
qualify as coverage for the minimum essential coverage requirement
under P.L. 111-148 (2010), as amended, and for stand-alone family
dental plans as defined in RCW 43.71.080(4)(a), only when offered in
the individual market, as defined in RCW 48.43.005((27)), or to a
small group, as defined in RCW 48.43.005((33)).

(b) Beginning January 1, 2014, moneys collected for premiums
written on qualified health benefit plans and qualified dental plans
offered through the health benefit exchange under chapter 43.71 RCW
must be deposited in the health benefit exchange account under RCW
43.71.060.

(3) In the case of insurers which require the payment by their
policyholders at the inception of their policies of the entire
premium thereon in the form of premiums or premium deposits which are
the same in amount, based on the character of the risks, regardless
of the length of term for which such policies are written, such tax
shall be in the amount of two percent of the gross amount of such
premiums and premium deposits upon policies on risks resident,
located, or to be performed in this state, in force as of the thirty-first
day of December next preceding, less the unused or unabsorbed
portion of such premiums and premium deposits computed at the average
rate thereof actually paid or credited to policyholders or applied in
part payment of any renewal premiums or premium deposits on one-year
policies expiring during such year.

(4) Each authorized insurer shall with respect to all ocean
marine and foreign trade insurance contracts written within this
state during the preceding calendar year, on or before the first day
of March of each year pay to the state treasurer through the
commissioner's office a tax of ninety-five one-hundredths of one
percent on its gross underwriting profit. Such gross underwriting
profit shall be ascertained by deducting from the net premiums (i.e.,
gross premiums less all return premiums and premiums for reinsurance)
on such ocean marine and foreign trade insurance contracts the net
losses paid (i.e., gross losses paid less salvage and recoveries on
reinsurance ceded) during such calendar year under such contracts. In
the case of insurers issuing participating contracts, such gross
underwriting profit shall not include, for computation of the tax
prescribed by this subsection, the amounts refunded, or paid as
participation dividends, by such insurers to the holders of such
contracts.

(5) The state does hereby preempt the field of imposing excise or
privilege taxes upon insurers or their appointed insurance producers,
other than title insurers, and no county, city, town or other
municipal subdivision shall have the right to impose any such taxes
upon such insurers or these insurance producers.

(6) If an authorized insurer collects or receives any such
premiums on account of policies in force in this state which were
originally issued by another insurer and which other insurer is not
authorized to transact insurance in this state on its own account,
such collecting insurer shall be liable for and shall pay the tax on
such premiums.

Sec. 8. 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 subsections (7) and (8) of this
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 that is issued by a registered eligible captive insurer under chapter 48.---RCW (the new chapter created in section 12 of this act).

Sec. 9. RCW 48.15.160 and 2008 c 217 s 11 are each amended to read as follows:

(1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance, insurance issued by a registered eligible captive insurer under chapter 48.---RCW (the new chapter created in section 12 of this act), or to the following insurances when so placed by licensed insurance producers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Insurance producers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The insurance producer shall furnish to the commissioner at the commissioner's request and on forms as designated...
and furnished by him or her a report of all such coverages so placed
in a designated calendar year.

Sec. 10. RCW 82.04.320 and 1961 c 15 s 82.04.320 are each
amended to read as follows:

((This)) (1) Except as otherwise provided in this section, this
chapter ((shall)) does not apply to any person in respect to
insurance business upon which a tax based on gross premiums is paid
to the state((: PROVIDED, That the)).

(2) The provisions of this section ((shall)) do not exempt any
person engaging in the business of representing any insurance
company, whether as general or local agent, or acting as broker for
such companies((: PROVIDED FURTHER, That the)).

(3) The provisions of this section ((shall)) do not exempt any
bonding company from tax with respect to gross income derived from
the completion of any contract as to which it is a surety, or as to
any liability as successor to the liability of the defaulting
contractor.

(4) For purposes of this section, for periods preceding the
effective date of this section, eligible captive insurers as defined
in section 2 of this act are deemed to be persons in respect to
insurance business that have paid a tax on gross premiums to the
state.

Sec. 11. RCW 48.14.090 and 2009 c 161 s 4 are each amended to
read as follows:

In determining the amount of direct premium taxable in this state
other than for policies issued by an eligible captive insurer as
defined in section 2 of this act, all such premiums written,
procured, or received in this state shall be deemed written upon
risks or property resident, situated, or to be performed in this
state except such premiums as are properly allocated or apportioned
and reported as taxable premiums of any other state or states. For
tax purposes, the reporting of premiums shall be on a written basis
or on a paid-for basis consistent with the basis required by the
annual statement.

NEW SECTION. Sec. 12. Sections 1 through 6 of this act
constitute a new chapter in Title 48 RCW.
NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. Sections 8 through 11 of this act apply both retroactively and prospectively.

NEW SECTION. Sec. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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