

HOUSE BILL REPORT

HB 1714

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to enabling opportunities for risk pooling by small businesses for property and liability risks.

Brief Description: Enabling opportunities for risk pooling by small businesses for property and liability risks.

Sponsors: Representatives Cortes, Walen, Parshley, Callan, Zahn, Peterson, Shavers, Salahuddin, Street, Reed, Nance, Ormsby and Hill.

Brief History:

Committee Activity:

Consumer Protection & Business: 2/12/25, 2/19/25 [DPS].

Brief Summary of Substitute Bill

- Authorizes and establishes requirements for small business entities to join or create self-insured risk pools with other small business entities.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Walen, Chair; McClintock, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Abbarno, Berry, Corry, Donaghy, Fosse, Kloba, Morgan, Reeves, Ryu, Santos, Steele and Volz.

Staff: Peter Clodfelter (786-7127).

Background:

In the Insurance Code, there is authorization for two or more nonprofit corporations to

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participate in a joint self-insurance program covering property or liability risks, subject to approval by the State Risk Manager (Risk Manager) within the Office of Risk Management in the Department of Enterprise Services. A similar program is available for local governments for property and liability risks, and also for health and welfare benefits.

These programs allow for joint self-insurance against risks, joint purchasing of insurance or reinsurance, and contracting for risk management, claims, and administrative services. Joint self-insurance risk pools are authorized to create and delegate powers to a separate legal or administrative entity, and to obligate the pool's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the pool, including the establishment of a reserve or fund for coverage.

Summary of Substitute Bill:

Joint Self-Insurance Program for Small Business Entities.

A small business entity may join or form a joint self-insurance program together with one or more other small business entities, and may jointly purchase insurance or reinsurance with one or more other small business entities for property and liability risks only as permitted under the bill.

A "small business entity" is defined as a business having no more than 20 employees, employed on average over the latest 24 calendar months, counting all employees regardless of the hours worked or the temporary status of an employee. However, if an entity has not been in business for 24 months, the average number of employees is used for each of the pay periods during which it has been in business.

The agreement to form a program may include the organization of a separate legal or administrative entity with powers delegated to the entity, which may include or form another entity. If provided for in the organizational documents, a program may:

- contract or provide for risk management and loss control services;
- contract or otherwise provide legal counsel for the defense of claims and other legal services;
- consult with the Insurance Commissioner and the Risk Manager;
- jointly purchase insurance and reinsurance coverage;
- obligate the program's participants to pledge funds or revenues to secure the obligations or pay the expenses of the program, including the establishment of a reserve fund for coverage and an additional assessment if the reserve fund or the program's revenue or assets are insufficient to cover the program's liabilities; and
- possess any other powers and perform all other functions reasonably necessary to carry out the purposes of the program.

Every program must appoint the Risk Manager as its attorney to receive service of, and upon whom must be served, all legal process issued against the program in Washington

from causes of action arising in Washington. The Risk Manager must keep a record of the day and hour of service of all legal process.

A copy of the process, by registered mail with return receipt requested, must be sent by the Risk Manager to the person designated to receive legal process by the program in its most recent designation filed with the Risk Manager. Proceedings may not commence against the program, and the program is not required to appear, plead, or answer, until the expiration of 40 days after the date of service upon the Risk Manager.

Once approved, a program may not be transferred to, nor may control over such a program be given to or taken by, a broker or other person without the express agreement of all small business entities participating in the approved program and the approval of the Risk Manager.

Risk Manager—Rules.

The Risk Manager must adopt rules governing the management and operation of programs for small business entities that cover property or liability risks. All rules must be appropriate for the type of program and class of risk covered. The rules must include specified standards.

Plan of Management and Operation—Risk Manager Approval.

Before the establishment of a program, the small business entities must obtain the approval of the Risk Manager, and submit a plan of management and operation with specific information, including:

- the risks to be covered;
- the amount and method of funding for the covered risks;
- the proposed claim reserving practices;
- the proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the program;
- a professional analysis of the feasibility of the creation and maintenance of the program; and
- other information.

A small business entity may participate in a program covering property or liability risks with similar small business entities from other states if the program satisfies certain requirements in the bill.

Within 120 days of receipt of a plan of management and operation, the Risk Manager must either approve or disapprove of the formation of the program after reviewing the plan to determine whether the proposed program complies with the law and rules.

If the Risk Manager determines that a joint self-insurance program covering property or liability risks is in violation of the law or is operating in an unsafe financial condition, the Risk Manager may issue and serve upon the program an order to cease and desist from the

violation or practice. In certain circumstances the Risk Manager may notify the Attorney General, and levy fines that are sent to the State Treasurer for deposit into the General Fund.

Each approved program must annually file a report with the Risk Manager providing information including details of corporate changes, copies of insurance coverage documents, a description of the program structure, an actuarial analysis, and other information.

Investigation Fee.

The Risk Manager must establish and charge an investigation fee in an amount necessary to cover the costs for the initial review and approval of a program. The costs of subsequent reviews and investigations must be charged to the program being reviewed or investigated in accordance with the actual time and expenses incurred in the review or investigation. Any program failing to remit its assessment when due is subject to a denial of permission to operate or to a cease and desist order until the assessment is paid.

Exemptions.

A program approved by the Risk Manager is exempt from insurance premium taxes, other fees assessed under the Insurance Code, business and occupation taxes, and any assigned risk plan or joint underwriting association otherwise required by law. This does not apply to, or provide exemptions for, insurance companies issuing policies to cover program risks and third-party administrators or insurance producers serving the program. An exemption is provided from requirements for a tax preference performance statement and also from the limitation that a tax preference generally expires after 10 years.

Liability and Immunity.

Any person who files, reports, or furnishes other information required under the Insurance Code, required by the Risk Manager, or which is useful to the Risk Manager in the administration of the law, is immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the Risk Manager, unless actual malice, fraud, or bad faith is shown.

The Risk Manager and the Risk Manager's agents and employees are immune from liability in any civil action or suit arising from the publication of any report or bulletin or from dissemination of information related to the official activities of the Risk Manager, unless actual malice, fraud, or bad faith is shown.

Exclusions.

This bill does not apply to a small business entity that: (1) individually self-insures for property and liability risks; (2) participates in a risk pooling arrangement, including a risk retention group or a risk purchasing group, regulated under Washington law, or is a captive insurer authorized in its state of domicile; or (3) is a hospital or an entity owned, operated, controlled by, or affiliated with such a hospital that participates in a self-insurance risk pool or other risk pooling arrangement.

Substitute Bill Compared to Original Bill:

The substitute bill moves the proposed business and occupation tax (B&O tax) exemption for approved joint self-insurance programs for small business entities to the B&O tax chapter, limits the scope of the exemption to income from risk pooling activities by participating small business entities, and exempts the substitute bill from tax preference performance statement requirements and the 10-year tax preference expiration date.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is intended to support small businesses, which for purposes of the bill are defined as entities with 20 or fewer employees. Many small business owners are raising a need for finding solutions to rising insurance costs. Insurance costs have been increasing by large percentages for businesses. This would make it easier for small businesses to jointly self-insure and protect against property and liability risks, and provide small businesses with the same cost-saving and risk-pooling opportunities currently available to nonprofits and local governments. This will enhance financial resiliency and competitiveness. It will also establish a framework with strong oversight by Washington's Office of Risk Management to ensure financial safety and responsible program operations. Businesses face pressure on profit margins, and this bill will provide meaningful support. The hospitality industry is struggling and has profit margins around 1.5 percent. Lodging establishments are still struggling to catch up to business levels from 2019 after accounting for inflation. Rising costs, especially insurance costs, are the greatest challenge these businesses face in continuing operations and retaining employees. Lack of available insurance coverage is also a problem. A large insurer who provided liquor liability insurance recently stopped issuing or renewing policies. This bill would help small businesses that are struggling with these costs or in finding insurance.

(Opposed) None.

Persons Testifying: Representative Julio Cortes, prime sponsor; and Julia Gorton, Washington Hospitality Association.

Persons Signed In To Testify But Not Testifying: None.