
SUBSTITUTE HOUSE BILL 1714

State of Washington

69th Legislature

2025 Regular Session

By House Consumer Protection & Business (originally sponsored by Representatives Cortes, Walen, Parshley, Callan, Zahn, Peterson, Shavers, Salahuddin, Street, Reed, Nance, Ormsby, and Hill)

READ FIRST TIME 02/21/25.

1 AN ACT Relating to enabling opportunities for risk pooling by
2 small businesses for property and liability risks; adding a new
3 section to chapter 82.04 RCW; adding a new chapter to Title 48 RCW;
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** This chapter is intended to provide
7 authority for two or more small business entities to participate in a
8 joint self-insurance program covering property or liability risks.
9 This chapter provides small business entities with the authority to
10 jointly self-insure property and liability risks, jointly purchase
11 insurance or reinsurance, and contract for risk management, claims,
12 and administrative services with other small business entities. This
13 chapter must be liberally construed to grant small business entities
14 maximum flexibility in jointly self-insuring to the extent the self-
15 insurance programs are operated in a safe and sound manner. This
16 chapter is intended to require prior approval for the establishment
17 of every joint self-insurance program. In addition, this chapter is
18 intended to require every joint self-insurance program for small
19 business entities established under this chapter to notify the state
20 of the existence of the program and to comply with the regulatory and
21 statutory standards governing the management and operation of the

1 programs as provided in this chapter. This chapter is not intended to
2 authorize or regulate self-insurance of unemployment compensation
3 under chapter 50.44 RCW or industrial insurance under chapter 51.14
4 RCW.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Program" means a joint self-insurance program authorized
9 under section 3 of this act.

10 (2) "Property and liability risks" includes the risk of property
11 damage or loss sustained by a small business entity and the risk of
12 claims arising from the tortious or negligent conduct or any error or
13 omission of the entity, its officers, employees, agents, or
14 volunteers as a result of a claim that may be made against the
15 entity.

16 (3) "Self-insurance" means a formal program of advance funding
17 and management of entity financial exposure to a risk of loss that is
18 not transferred through the purchase of an insurance policy or
19 contract.

20 (4) "Small business entity" means a corporation, limited
21 liability company, limited partnership, limited liability
22 partnership, general cooperative association, limited cooperative
23 association, sole proprietorship, or another type of for-profit
24 business entity, so long as the entity has no more than 20 employees
25 employed on average over the latest 24 calendar months, counting all
26 employees regardless of the hours worked or temporary status of an
27 employee, provided that if an entity has not been in business for 24
28 months, the average number of employees is used for each of the pay
29 periods during which it has been in business.

30 (5) "State risk manager" means the risk manager of the office of
31 risk management within the department of enterprise services.

32 NEW SECTION. **Sec. 3.** (1) A small business entity may join or
33 form a joint self-insurance program together with one or more other
34 small business entities, and may jointly purchase insurance or
35 reinsurance with one or more other small business entities for
36 property and liability risks only as permitted under this chapter.
37 Small business entities may contract for or hire personnel to provide

1 risk management, claims, and administrative services in accordance
2 with this chapter.

3 (2) The agreement to form a program may include the organization
4 of a separate legal or administrative entity with powers delegated to
5 the entity. The entity may include or form another entity.

6 (3) If provided for in the organizational documents, a program
7 may, in conformance with this chapter:

8 (a) Contract or otherwise provide for risk management and loss
9 control services;

10 (b) Contract or otherwise provide legal counsel for the defense
11 of claims and other legal services;

12 (c) Consult with the commissioner and the state risk manager;

13 (d) Jointly purchase insurance and reinsurance coverage in a form
14 and amount as provided for in the organizational documents;

15 (e) Obligate the program's participants to pledge funds or
16 revenues to secure the obligations or pay the expenses of the
17 program, including the establishment of a reserve fund for coverage,
18 including an additional assessment if the reserve fund or the
19 program's revenue or assets are insufficient to cover the program's
20 liabilities; and

21 (f) Possess any other powers and perform all other functions
22 reasonably necessary to carry out the purposes of this chapter.

23 (4) Every program governed by this chapter must appoint the state
24 risk manager as its attorney to receive service of, and upon whom
25 must be served, all legal process issued against the program in this
26 state upon causes of action arising in this state.

27 (a) Service upon the state risk manager as attorney constitutes
28 service upon the program. Service upon programs subject to this
29 chapter may only occur by service upon the state risk manager. At the
30 time of service, the plaintiff shall pay to the state risk manager a
31 fee to be set by the state risk manager, taxable as costs in the
32 action.

33 (b) With the initial filing for approval with the state risk
34 manager, each program must designate by name and address the person
35 to whom the state risk manager must forward legal process that is
36 served upon him or her. The program may change this person by filing
37 a new designation.

38 (c) The appointment of the state risk manager as attorney is
39 irrevocable, binds any successor in interest or to the assets or
40 liabilities of the program, and remains in effect as long as there is

1 in force in this state any contract made by the program or
2 liabilities or duties arising from the contract.

3 (d) The state risk manager shall keep a record of the day and
4 hour of service upon him or her of all legal process. A copy of the
5 process, by registered mail with return receipt requested, must be
6 sent by the state risk manager to the person designated to receive
7 legal process by the program in its most recent designation filed
8 with the state risk manager. Proceedings may not commence against the
9 program, and the program is not required to appear, plead, or answer,
10 until the expiration of 40 days after the date of service upon the
11 state risk manager.

12 (e) For any legal process issued against the program for causes
13 of action arising outside of this state, the program shall provide
14 the state risk manager a copy of such claim.

15 (5) A program approved under this chapter may not be transferred
16 to, nor may control over such a program be given to or taken by, a
17 broker or other person without the express agreement of all small
18 business entities participating in the approved program and the
19 approval of the state risk manager.

20 NEW SECTION. **Sec. 4.** This chapter does not apply to a small
21 business entity that:

22 (1) Individually self-insures for property and liability risks;

23 (2) Participates in a risk pooling arrangement, including a risk
24 retention group or a risk purchasing group, regulated under chapter
25 48.92 RCW, or is a captive insurer authorized in its state of
26 domicile; or

27 (3) Is a hospital licensed under chapter 70.41 RCW, or an entity
28 owned, operated, controlled by, or affiliated with such a hospital
29 that participates in a self-insurance risk pool or other risk pooling
30 arrangement.

31 NEW SECTION. **Sec. 5.** The state risk manager shall adopt rules
32 governing the management and operation of programs for small business
33 entities that cover property or liability risks. All rules must be
34 appropriate for the type of program and class of risk covered. The
35 state risk manager's rules must include:

36 (1) Standards for the management, operation, and solvency of
37 programs, including the necessity and frequency of actuarial analyses
38 and claims audits;

- 1 (2) Standards for claims management procedures;
- 2 (3) Standards for contracts between programs and private
- 3 businesses, including standards for contracts between third-party
- 4 administrators and programs; and
- 5 (4) Standards requiring pool verification of each member's lawful
- 6 business status in their state of domicile.

7 NEW SECTION. **Sec. 6.** Before the establishment of a program
8 covering property or liability risks by small business entities, the
9 entities must obtain the approval of the state risk manager. The
10 small business entities proposing the creation of a program requiring
11 prior approval shall submit a plan of management and operation to the
12 state risk manager that provides at least the following information:

- 13 (1) The risk or risks to be covered, including any coverage
- 14 definitions, terms, conditions, and limitations;
- 15 (2) The amount and method of funding the covered risks, including
- 16 the initial capital and proposed rates and projected premiums;
- 17 (3) The proposed claim reserving practices;
- 18 (4) The proposed purchase and maintenance of insurance or
- 19 reinsurance in excess of the amounts retained by the program;
- 20 (5) The legal form of the program including, but not limited to,
- 21 any articles of incorporation, bylaws, charter, or trust agreement or
- 22 other agreement among the participating entities;
- 23 (6) The agreements with participants in the program defining the
- 24 responsibilities and benefits of each participant and management;
- 25 (7) The proposed accounting, depositing, and investment practices
- 26 of the program;
- 27 (8) The proposed time when actuarial analysis will be first
- 28 conducted and the frequency of future actuarial analysis;
- 29 (9) A designation of the individual to whom service of process
- 30 must be forwarded by the state risk manager on behalf of the program;
- 31 (10) All contracts between the program and private persons
- 32 providing risk management, claims, or other administrative services;
- 33 (11) A professional analysis of the feasibility of the creation
- 34 and maintenance of the program;
- 35 (12) A legal analysis or an internal revenue service opinion on
- 36 the federal income tax exposure or liability of the program; and
- 37 (13) Any other information required by rule of the state risk
- 38 manager that is necessary to determine the probable financial and

1 management success of the program or that is necessary to determine
2 compliance with this chapter.

3 NEW SECTION. **Sec. 7.** A small business entity may participate in
4 a program covering property or liability risks with similar small
5 business entities from other states if the program satisfies the
6 following requirements:

7 (1) An ownership interest in the program is limited to some or
8 all small business entities of this state and small business entities
9 of other states that are provided insurance by the program;

10 (2) The small business entities of this state and other states
11 elect a board of directors to manage the program, all of whom must be
12 affiliated with one or more of the participating small business
13 entities;

14 (3) The program provides coverage through the delivery to each
15 participating small business entity of one or more written policies
16 affecting insurance of covered risks;

17 (4) The program is financed, including the payment of premiums
18 and the contribution of initial capital, in accordance with the plan
19 of management and operation submitted to the state risk manager in
20 accordance with this chapter;

21 (5) The financial statements of the program are audited by a
22 certified public accountant, and these audited financial statements
23 are delivered to the state risk manager not more than 120 days after
24 the end of each fiscal year of the program;

25 (6) The investments of the program are initiated only with
26 financial institutions or broker-dealers, or both, doing business in
27 those states in which participating small business entities are
28 located, and these investments are audited annually by the certified
29 public accountants for the program;

30 (7) The treasurer of a multistate joint self-insurance program is
31 designated by resolution of the program and the treasurer is located
32 in the state of one of the participating entities; and

33 (8) The program obtains approval from the state risk manager in
34 accordance with this chapter and remains in compliance with this
35 chapter, unless exempt from application for reapproval, as granted
36 under RCW 48.180.015.

37 NEW SECTION. **Sec. 8.** (1) Within 120 days of receipt of a plan
38 of management and operation, the state risk manager shall either

1 approve or disapprove of the formation of the program after reviewing
2 the plan to determine whether the proposed program complies with this
3 chapter and all rules adopted in accordance with this chapter.

4 (2) If the state risk manager denies a request for approval, the
5 state risk manager shall specify in detail the reasons for denial and
6 the manner in which the program fails to meet the requirements of
7 this chapter or any rules adopted in accordance with this chapter.

8 (3) If the state risk manager determines that a joint self-
9 insurance program covering property or liability risks is in
10 violation of this chapter or is operating in an unsafe financial
11 condition, the state risk manager may issue and serve upon the
12 program an order to cease and desist from the violation or practice.

13 (a) The state risk manager shall deliver the cease and desist
14 order to the appropriate entity or entities directly or mail it to
15 the appropriate entity or entities by certified mail with return
16 receipt requested.

17 (b) If the program violates the cease and desist order or has not
18 taken steps to comply with the cease and desist order after the
19 expiration of 20 days after the cease and desist order has been
20 received by the program, the program is deemed to be operating in
21 violation of this chapter, and the state risk manager shall notify
22 the attorney general of the violation.

23 (c) After hearing, or with the consent of a program governed
24 under this chapter, and in addition to or in lieu of a continuation
25 of the cease and desist order, the state risk manager may levy a fine
26 upon the program in an amount not less than \$300 and not more than
27 \$10,000. The order levying the fine must specify the period within
28 which the fine must be fully paid. The period within which the fines
29 must be paid must not be less than 15 and not more than 30 days from
30 the date of the order. Upon failure to pay the fine when due, the
31 state risk manager shall request the attorney general to bring a
32 civil action on the state risk manager's behalf to collect the fine.
33 The state risk manager shall pay any fine collected to the state
34 treasurer for deposit into the general fund.

35 (4) Each program approved by the state risk manager shall
36 annually file a report with the state risk manager providing:

37 (a) Details of any changes in the articles of incorporation,
38 bylaws, charter, trust agreement, or other agreement among the
39 participating small business entities;

40 (b) Copies of all the insurance coverage documents;

1 (c) A description of the program structure, including
2 participants' retention, program retention, and excess insurance
3 limits and attachment point;

4 (d) An actuarial analysis;

5 (e) A list of contractors and service providers;

6 (f) The financial and loss experience of the program; and

7 (g) Other information as required by rule of the state risk
8 manager.

9 (5) A program requiring the state risk manager's approval may not
10 engage in an act or practice that in any respect significantly
11 differs from the management and operation plan that formed the basis
12 for the state risk manager's approval of the program unless the
13 program first notifies the state risk manager in writing and obtains
14 the state risk manager's approval. The state risk manager shall
15 approve or disapprove the proposed change within 60 days of receipt
16 of the notice. If the state risk manager denies a requested change,
17 the state risk manager shall specify in detail the reasons for the
18 denial and the manner in which the program would fail to meet the
19 requirements of this chapter or any rules adopted in accordance with
20 this chapter.

21 NEW SECTION. **Sec. 9.** (1) The state risk manager shall establish
22 and charge an investigation fee in an amount necessary to cover the
23 costs for the initial review and approval of a program. The fee must
24 accompany the initial submission of the plan of management and
25 operation required under section 6 of this act.

26 (2) The costs of subsequent reviews and investigations must be
27 charged to the program being reviewed or investigated in accordance
28 with the actual time and expenses incurred in the review or
29 investigation.

30 (3) Any program failing to remit its assessment when due is
31 subject to denial of permission to operate or to a cease and desist
32 order until the assessment is paid.

33 NEW SECTION. **Sec. 10.** (1) A program may by resolution of the
34 program designate a person having experience with investments or
35 financial matters as treasurer of the program. The program must
36 require a bond obtained from a surety company in an amount and under
37 the terms and conditions that the program finds will protect against

1 loss arising from mismanagement or malfeasance in investing and
2 managing program funds. The program may pay the premium on the bond.

3 (2) All interest and earnings collected on program funds belong
4 to the program and must be deposited to the program's credit in the
5 proper program account.

6 NEW SECTION. **Sec. 11.** (1) An employee or official of a
7 participating small business entity in a program may not directly or
8 indirectly receive anything of value for services rendered in
9 connection with the operation and management of a program other than
10 the salary and benefits provided by his or her employer or the
11 reimbursement of expenses reasonably incurred in furtherance of the
12 operation or management of the program. An employee or official of a
13 participating small business entity in a program may not accept or
14 solicit anything of value for personal benefit or for the benefit of
15 others under circumstances in which it can be reasonably inferred
16 that the employee's or official's independence of judgment is
17 impaired with respect to the management and operation of the program.

18 (2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of
19 insurance producers and surplus line brokers by a program.

20 NEW SECTION. **Sec. 12.** A program approved in accordance with
21 this chapter is exempt from insurance premium taxes, fees assessed
22 under chapters 48.02, 48.32, and 48.32A RCW, and any assigned risk
23 plan or joint underwriting association otherwise required by law.
24 This section does not apply to or provide exemptions for insurance
25 companies issuing policies to cover program risks and third-party
26 administrators or insurance producers serving the program.

27 NEW SECTION. **Sec. 13.** (1) Any person who files, reports, or
28 furnishes other information required under this title, required by
29 the state risk manager under the authority granted under this title,
30 or which is useful to the state risk manager in the administration of
31 this title is immune from liability in any civil action or suit
32 arising from the filing of any such report or furnishing such
33 information to the state risk manager, unless actual malice, fraud,
34 or bad faith is shown.

35 (2) The state risk manager and his or her agents and employees
36 are immune from liability in any civil action or suit arising from
37 the publication of any report or bulletin or from dissemination of

1 information related to the official activities of the state risk
2 manager unless actual malice, fraud, or bad faith is shown.

3 (3) The immunity granted under this section is in addition to any
4 common law or statutory privilege or immunity enjoyed by such person.
5 This section is not intended to abrogate or modify in any way such
6 common law or statutory privilege or immunity.

7 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.04
8 RCW to read as follows:

9 This chapter does not apply to any program approved under
10 sections 1 through 13 of this act with respect to income from risk
11 pooling activities by participating small business entities. In
12 accordance with section 12 of this act, this section does not apply
13 to or provide exemptions for insurance companies issuing policies to
14 cover program risks and third-party administrators or insurance
15 producers serving the program.

16 NEW SECTION. **Sec. 15.** RCW 82.32.805 and 82.32.808 do not apply
17 to this act.

18 NEW SECTION. **Sec. 16.** Sections 1 through 13 of this act
19 constitute a new chapter in Title 48 RCW.

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