

WSR 24-16-117

PROPOSED RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2024-04—Filed August 5, 2024, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-074.

Title of Rule and Other Identifying Information: Implementation of SB 6027 (chapter 42, Laws of 2024), Insurance Holding Company Act.

Hearing Location(s): On September 12, 2024, at 9:00 a.m., virtually via Zoom meeting <https://wa-oic.zoom.us/join/9876543210>. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/insurer-holding-company-act-r-2024-04>.

Date of Intended Adoption: September 17, 2024.

Submit Written Comments to: RulesCoordinator@oic.wa.gov, 302 Sid Snyder Avenue, P.O. Box 40255, Olympia, WA 98504-0255, fax 360-586-3109, by close of business (5:00 p.m. PST) on September 13, 2024.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.bennett@oic.wa.gov, by September 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 6027 (chapter 42, Laws of 2024), concerning the Insurance Holding Company Act, passed during the 68th legislative session. This new law aligns Washington's Insurer Holding Company Act (chapter 48.31B RCW) with the updated National Association of Insurance Commissioners (NAIC) model authorities on this topic.

The commissioner is considering adding provisions from Section 21 of NAIC model regulation #450 to a new section in the existing regulations for Washington insurance holding companies located in chapter 284-18 WAC.

Reasons Supporting Proposal: The commissioner is considering rule making to fully implement the new law and updates to NAIC model law #440 and model regulation #450. This rule making is needed to provide administrative guidance and regulatory clarification for the group capital calculation requirements, including insurance holding company exemptions as recommended by NAIC.

Statutory Authority for Adoption: RCW 48.02.060 (3) (a), 48.31B.025 (2) (h), (4), (10), (13) (c), and 48.31B.040.

Statute Being Implemented: Chapter 42, Laws of 2024.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Langford, 302 Sid Snyder Avenue, Olympia, WA 98501, 360-725-7173; Implementation: John Haworth, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5) (b) (iii), this rule will be exempt from the requirements of the cost-benefit analysis. This section indicates that

exemptions apply to "[r]ules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." This rule making is attempting to adopt or incorporate by reference without material change, national consensus codes that generally establish industry standards with NAIC Model Regulation #450, Insurance Holding Company System Model Regulation With Reporting Forms and Instructions, and the regulations being promulgated will regulate the same subject matter and conduct as the adopting or incorporating rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: Under RCW 19.85.025(3), the Regulatory Fairness Act does not apply to the adoption of a rule as described in RCW 34.05.310(4). The rules referenced in this law include "[r]ules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule" (see RCW 34.05.310 (4) (C)). This rule making is attempting to adopt or incorporate by reference without material change national consensus codes that generally establish industry standards with NAIC Model Regulation #450, Insurance Holding Company System Model Regulation With Reporting Forms and Instructions, and the regulations being promulgated will regulate the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is fully exempt.

August 5, 2024
Mike Kreidler
Insurance Commissioner

OTS-5429.3

NEW SECTION

WAC 284-18-447 Group capital calculation. (1) Group capital calculation. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

- (a) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;
- (b) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- (d) The holding company system attests that there are no material changes in the transactions between insurers and noninsurers in the group that have occurred since the last filing of the annual group capital; and
- (e) The noninsurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if: The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional criteria are met:

- (a) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (b) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and
- (c) The holding company system attests that there are no material changes in transactions between insurers and noninsurers in the group that have occurred since the last filing of the report to the lead state commissioner and the noninsurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsection (1) or (2) of this regulation, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

- (a) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in RCW 48.05.430 through 48.05.455, or 48.43.300 through 48.43.325 or a similar standard for a non-U.S. insurer; or

(b) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-300 through 284-16-320; or

(c) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if it satisfies the following criteria:

(a) With respect to RCW 48.31B.025 (13) (a) (iv):

(i) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subsection (4) (a) (i) of this regulation.

(b) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-U.S. jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process:

(a) A list of jurisdictions that recognize and accept the group capital calculation pursuant to RCW 48.31B.025 (13) (a) (iv), is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under RCW 48.31B.025 (13) (a) (iv). To assist with a determination under RCW 48.31B.025 (13) (b), the list will also identify whether a jurisdiction that is exempted under either RCW 48.31B.025 (13) (a) (iii) or (iv) requires a group capital filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

(b) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subsec-

tion (4)(a)(ii) of this regulation will serve as support for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to RCW 48.31B.025 (13)(a)(iv) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that recognizes and accepts the group capital calculation.