

WSR 21-23-078
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Filed November 15, 2021, 5:18 p.m., effective December 21, 2021]

Effective Date of Rule: December 21, 2021.

Purpose: The act relating to captive insurance (2SSB 5315) has become effective as law (chapter 48.201 RCW). This law establishes statutory framework for Washington-based private entities and public institutions of higher education to manage their risks through captive insurers, which will require proper regulation and taxation by the office of the insurance commissioner (OIC). This law also authorizes OIC rule making to incorporate the statutory framework and requirements for captive insurance into the Washington Administrative Code, along with implementation processes, clarifications, and regulatory guidance.

The anticipated effects of the rule making relate to determining eligibility of captive insurers, registering and renewing eligible captive insurers, enforcement, and collecting associated taxes, registration fees, and annual renewal fees from captive insurers that are licensed by their domicile jurisdictions and insure Washington-based entities.

These rules will facilitate implementation of captive insurance by ensuring that all affected entities understand their rights and obligations under the new law.

Citation of Rules Affected by this Order: New chapter 284-201 WAC.

Statutory Authority for Adoption: RCW 48.02.060 (3) (a) and 48.201.060.

Adopted under notice filed as WSR 21-20-093 on October 1, 2021.

Changes Other than Editing from Proposed to Adopted Version: The proposed captive insurance regulations outline insurance limitations, where captive insurers are unable to provide workers compensation, unless under certain parameters in WAC 284-201-230 (1) (b). Feedback received in response to the proposed rule making (CR-102) suggested that the rules be revised to include "state" in front of workers compensation insurance, so as to make it clear this limitation is a state or jurisdiction limit for Washington, and not for United States L&H coverage. Captives covering Washington risk cannot provide Washington state workers compensation directly under Title 51 RCW. The requested revision attempts to achieve that which the rule was drafted for, limiting captive insurers from providing workers compensation insurance in Washington, unless done properly through United States L&H coverage and not under Title 51 RCW. Therefore, the rule received a minor technical revision, which clarifies that *"Captive insurers may not provide workers compensation coverage subject to Title 51 RCW that directly covers the worker. Captive insurers may indemnify a self-insured employer for their state workers' compensation liability."* (WAC 284-201-230 (1) (b)). This change is within the general subject matter of the proposed rule (RCW 34.05.340).

A final cost-benefit analysis is available by contacting Michael Walker, Policy Analyst, 302 Sid Snyder Avenue, Olympia, WA 98504, phone 360-725-7036, fax 360-586-3109, TTY 360-586-0241, email RulesCoordinator@oic.wa.gov, website OIC.WA.GOV.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 15, 2021.

Mike Kreidler
Insurance Commissioner

OTS-3316.5

**Chapter 284-201 WAC
CAPTIVE INSURANCE**

NEW SECTION

WAC 284-201-110 Purpose. These regulations implement captive insurance (chapter 48.201 RCW) including, but not limited to, the processes and procedures for regulation and taxation of captive insurers by the office of the insurance commissioner (commissioner).

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NEW SECTION

WAC 284-201-120 Applicability and scope. This chapter applies to eligible captive insurers as defined in chapter 48.201 RCW, except for risk retention groups that must register pursuant to chapter 48.92 RCW and captive insurers that solely place insurance through a surplus line broker pursuant to chapter 48.15 RCW.

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NEW SECTION

WAC 284-201-130 Definitions. The definitions in RCW 48.201.020, apply in this regulation unless otherwise specified or unless the context clearly requires otherwise. The following definitions apply to this chapter and to chapter 48.201 RCW:

(1) "Captive insurer" means an entity that is wholly or partially owned by a "captive owner" and it insures risks of the captive owner, the captive owner's other affiliates, or both.

(2) "Eligible captive insurer" has the same meaning as set forth in chapter 48.201 RCW.

(3) "Insurer" has the same meaning as set forth in RCW 48.01.050.

(4) "Principal place of business" refers to the place where a business entity's management direct, control, and coordinate the corporation's activities, i.e., its "nerve center," which will typically be found at its corporate headquarters. Except where the parent corporation is the alter ego of the subsidiary, subsidiaries are analyzed separately from their parent or holding companies. For example, if a captive insurer insures a subsidiary that is headquartered in Washington, then this state would be the principal place of business for the insured subsidiary, even if the parent company was headquartered elsewhere.

(5) "Registered eligible captive insurer" means an eligible captive insurer who submitted an application that was approved by the commissioner. A registered eligible captive insurer that fails to properly renew its registration will no longer be considered registered under chapter 48.201 RCW.

(6) "Reinsurance" means a form of insurance issued to insurers.

(7) "Reinsurer" means an insurer that assumes all or part of an insurance or reinsurance policy written by the ceding insurer.

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NEW SECTION

WAC 284-201-140 Computation of time. In computing any period of time prescribed by this rule, the commissioner:

(1) Will not count the first day; and

(2) Will count the next and last day, unless either is a weekend or a state legal holiday.

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NEW SECTION

WAC 284-201-150 Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of the chapter or its application of the provision to other persons or circumstances is not affected.

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NEW SECTION

WAC 284-201-210 Registration. (1) Eligible captive insurers must register with the commissioner within 120 days of May 12, 2021,

or if later, within 120 days after first issuing a policy that covers Washington risks.

(2) The registration period for eligible captive insurers will be from the date the registration is approved by the commissioner, through June 30th.

(3) The commissioner may request and the eligible captive insurer must provide additional documentation and information to show registration requirements have been met.

(4) The registration fee is \$2,500.00.

(5) The commissioner will approve an eligible captive insurer's registration, if the commissioner determines that it meets the eligibility requirements in chapter 48.201 RCW, and this section.

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NEW SECTION

WAC 284-201-220 Renewal. (1) To maintain registration, a registered eligible captive insurer must renew certificates of registration annually by June 30th. If an eligible captive insurer fails to properly renew their certificate of registration, then its registration will expire at the end of its registration period.

(2) The renewal process will require that a registered eligible captive insurer continue to meet eligibility requirements in accordance with RCW 48.201.020 and 48.201.030, and pay a renewal fee.

(3) For renewal, the commissioner will charge an annual renewal fee not to exceed \$2,500.00. The amount of the renewal fee will be published on the commissioner's website and must be paid by June 30th.

(4) The renewal period will be from July 1st through June 30th.

(5) In order to obtain a timely annual renewal, a registered eligible captive insurer should file the renewal application no later than April 1st. Otherwise, OIC may not approve the eligible captive insurer's renewal before the June 30th expiration date and the eligible captive insurer's registration will expire. If an eligible captive insurer's registration expires, it will then need to complete and file a new application and pay the fee for a new registration.

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NEW SECTION

WAC 284-201-230 Insurance limitations. (1) For Washington risks, a registered eligible captive insurer may provide only property and casualty insurance, and may provide such insurance to only a captive owner, to the captive owner's other affiliates, or both, unless it places the insurance through a surplus lines broker pursuant to chapter 48.15 RCW.

(a) A registered eligible captive insurer may not provide stop loss insurance as defined in RCW 48.11.030 or 48.21.015.

(b) A registered eligible captive insurer may not provide workers' compensation coverage subject to Title 51 RCW that directly covers the worker. A registered eligible captive insurer may indemnify a self-insured employer for their state workers' compensation liability.

(2) A registered eligible captive insurer may assume risks from other insurers as a reinsurer without regard to the limitations in subsection (1) of this section.

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NEW SECTION

WAC 284-201-240 Taxes. (1) A registered eligible captive insurer shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a two percent tax on premiums for insurance directly procured by and provided to its parent or another affiliate for Washington risks during the previous calendar year. A registered eligible captive insurer that fails to remit the tax by the last day of the month in which the tax becomes due, will be subject to the tax, penalties, and interest provided in RCW 48.14.060.

(2) A registered eligible captive insurer shall file with the commissioner a statement of premiums on a tax form furnished by the commissioner. For tax purposes, the reporting of premiums shall be on a written basis.

(3) Instructions for accessing the online tax forms will be sent out to the registered eligible captive insurer's tax contact in January of each year. Tax contact information is provided to the commissioner as part of the registration process.

(4) The registered eligible captive insurer must share its methodology and relevant analysis in determining its Washington risks allocation by submitting this information to the commissioner by April 1st of each year, in a method as prescribed and furnished by the commissioner.

(5) Prior period taxes. Eligible captive insurers who insured Washington risk for any period after January 1, 2011, must remit a two percent tax on premiums for insurance directly procured by and provided to its parent or another affiliate for Washington risks, if not previously remitted to the commissioner. The reporting of premiums under this section shall be on a written basis, in a method as prescribed and furnished by the commissioner. Taxes due for premiums procured prior to January 1, 2021, are not subject to the penalties or interest provided in RCW 48.14.060.

(6) Eligible captive insurers must pay premium tax for Washington risks covered by all types of insurance, including premiums collected for insurance that is not property or casualty insurance, if the eligible captive insurer provided such coverage for any period after January 1, 2011.

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NEW SECTION

WAC 284-201-250 Administration. (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 pen-

alties, and seek injunctive relief. Regarding any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural laws and regulations of the state.

(2) Fines and penalties.

(a) An eligible captive insurer that fails to register or maintain registration under this chapter or chapter 48.92 RCW is acting as an unlawful, unauthorized insurer, as set forth in RCW 48.15.020 and is subject to the fines and penalties under RCW 48.15.023, taxation under RCW 48.14.095 and penalties and interest under RCW 48.14.060.

(b) Captive insurers that have insured risks in Washington but are not eligible to register with the commissioner, continue to be subject to RCW 48.15.020, 48.15.023, 48.14.020, 48.14.060, and 48.14.095.

(c) A registered eligible captive insurer that violates any provision of this chapter will be subject to the fines and penalties applicable to authorized insurers generally, as set forth in chapter 48.05 RCW, including revocation of its registration, suspension of registration, and refusal to renew registration.

(d) The commissioner may deny the registration or renewal of a captive insurer who the commissioner has determined failed to sufficiently demonstrate the requirements outlined in RCW 48.201.020 and 48.201.030, and this chapter.

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NEW SECTION

WAC 284-201-300 Adjudicative proceedings. (1) Captive insurers may demand a hearing with the commissioner by submitting a request for an adjudicative proceeding in accordance with WAC 284-02-070 and RCW 48.04.010.

(2) General procedural and substantive requirements for adjudicative proceedings are contained in WAC 284-02-070, chapters 48.04 and 34.05 RCW.

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