
SUBSTITUTE HOUSE BILL 2480

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Dellwo, Broback, R. Johnson, Paris, Inslee, Winsley and Jones; by request of Insurance Commissioner)

Read first time 02/07/92.

1 AN ACT Relating to the financial supervision and solvency oversight
2 of insurance companies by the commissioner of insurance in order to
3 allow for accreditation of the insurance commissioner as an approved
4 insurance regulator by the national association of insurance
5 commissioners; amending RCW 48.03.010, 48.03.040, 48.03.050, 48.03.060,
6 48.05.340, 48.11.140, 48.12.180, 48.12.190, 48.12.200, 48.14.010,
7 48.31.030, 48.31.040, 48.31.280, 48.31.290, 48.31.300, 48.74.030,
8 48.74.040, 48.74.050, 48.74.060, 48.92.010, 48.92.020, 48.92.030,
9 48.92.040, 48.92.050, 48.92.070, 48.92.080, 48.92.090, 48.92.100,
10 48.92.120, 48.92.130, and 48.92.140; adding new sections to chapter
11 48.03 RCW; adding new sections to chapter 48.74 RCW; adding a new
12 section to chapter 48.92 RCW; adding new sections to chapter 48.31 RCW;
13 adding new chapters to Title 48 RCW; repealing RCW 48.07.090,
14 48.31A.005, 48.31A.010, 48.31A.020, 48.31A.030, 48.31A.040, 48.31A.050,
15 48.31A.055, 48.31A.060, 48.31A.070, 48.31A.080, 48.31A.090, 48.31A.100,

1 48.31A.110, 48.31A.120, 48.31A.130, and 48.31A.900; and prescribing
2 penalties.

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

4 NEW SECTION. **Sec. 1.** As used in this chapter, the following
5 terms shall have the respective meanings hereinafter set forth, unless
6 the context shall otherwise require:

7 (1) An "affiliate" of, or person "affiliated" with, a specific
8 person, is a person that directly, or indirectly through one or more
9 intermediaries, controls, or is controlled by, or is under common
10 control with, the person specified.

11 (2) The term "control," including the terms "controlling,"
12 "controlled by," and "under common control with," means the possession,
13 direct or indirect, of the power to direct or cause the direction of
14 the management and policies of a person, whether through the ownership
15 of voting securities, by contract other than a commercial contract for
16 goods or nonmanagement services, or otherwise, unless the power is the
17 result of an official position with or corporate office held by the
18 person. Control shall be presumed to exist if any person, directly or
19 indirectly, owns, controls, holds with the power to vote, or holds
20 proxies representing, ten percent or more of the voting securities of
21 any other person. This presumption may be rebutted by a showing made
22 in a manner similar to that provided by section 5(11) of this act that
23 control does not exist in fact. The commissioner may determine, after
24 furnishing all persons in interest notice and opportunity to be heard
25 and making specific findings of fact to support such determination,
26 that control exists in fact, notwithstanding the absence of a
27 presumption to that effect.

1 (3) An "insurance holding company system" consists of two or more
2 affiliated persons, one or more of which is an insurer.

3 (4) The term "insurer" shall have the same meaning as set forth in
4 RCW 48.01.050, except that it shall not include agencies, authorities,
5 or instrumentalities of the United States, its possessions and
6 territories, the commonwealth of Puerto Rico, the District of Columbia,
7 or a state or political subdivision of a state.

8 (5) A "person" is an individual, a corporation, a partnership, an
9 association, a joint stock company, a trust, an unincorporated
10 organization, any similar entity or any combination of the foregoing
11 acting in concert, but shall not include any joint venture partnership
12 exclusively engaged in owning, managing, leasing, or developing real or
13 tangible personal property.

14 (6) A "securityholder" of a specified person is one who owns any
15 security of such person, including common stock, preferred stock, debt
16 obligations, and any other security convertible into or evidencing the
17 right to acquire any of the foregoing.

18 (7) A "subsidiary" of a specified person is an affiliate controlled
19 by such person directly or indirectly through one or more
20 intermediaries.

21 (8) The term "voting security" shall include any security
22 convertible into or evidencing a right to acquire a voting security.

23 NEW SECTION. **Sec. 2.** If an insurer ceases to control a
24 subsidiary, it shall dispose of any investment therein within three
25 years from the time of the cessation of control or within such further
26 time as the commissioner may prescribe, unless at any time after such
27 investment shall have been made, such investment shall have met the
28 requirements for investment under any other section of this Title, and
29 the insurer has notified the commissioner thereof.

1 (2) The statement to be filed with the commissioner hereunder shall
2 be made under oath or affirmation and shall contain the following
3 information:

4 (a) The name and address of each person by whom or on whose behalf
5 the merger or other acquisition of control referred to in subsection
6 (1) of this section is to be effected, hereinafter called "acquiring
7 party," and:

8 (i) If such person is an individual, his or her principal
9 occupation and all offices and positions held during the past five
10 years, and any conviction of crimes other than minor traffic violations
11 during the past ten years;

12 (ii) If such person is not an individual, a report of the nature of
13 its business operations during the past five years or for such lesser
14 period as such person and any predecessors thereof shall have been in
15 existence; an informative description of the business intended to be
16 done by such person's subsidiaries; any convictions of crimes during
17 the past ten years; and a list of all individuals who are or who have
18 been selected to become directors or executive officers of such person,
19 or who perform or will perform functions appropriate to such positions.
20 Such list shall include for each such individual the information
21 required by (a)(i) of this subsection.

22 (b) The source, nature, and amount of the consideration used or to
23 be used in effecting the merger or other acquisition of control, a
24 description of any transaction wherein funds were or are to be obtained
25 for any such purpose, including any pledge of the insurer's stock, or
26 the stock of any of its subsidiaries or controlling affiliates, and the
27 identity of persons furnishing such consideration: PROVIDED, HOWEVER,
28 That where a source of such consideration is a loan made in the
29 lender's ordinary course of business, the identity of the lender shall
30 remain confidential, if the person filing such statement so requests.

1 (c) Fully audited financial information as to the earnings and
2 financial condition of each acquiring party for the preceding five
3 fiscal years of each such acquiring party, or for such lesser period as
4 such acquiring party and any predecessors thereof shall have been in
5 existence, and similar unaudited information as of a date not earlier
6 than ninety days prior to the filing of the statement.

7 (d) Any plans or proposals which each acquiring party may have to
8 liquidate such insurer, to sell its assets or merge or consolidate it
9 with any person, or to make any other material change in its business
10 or corporate structure or management.

11 (e) The number of shares of any security referred to in subsection
12 (1) of this section which each acquiring party proposes to acquire, and
13 the terms of the offer, request, invitation, agreement, or acquisition
14 referred to in subsection (1) of this section, and a statement as to
15 the method by which the fairness of the proposal was arrived at.

16 (f) The amount of each class of any security referred to in
17 subsection (1) of this section which is beneficially owned or
18 concerning which there is a right to acquire beneficial ownership by
19 each acquiring party.

20 (g) A full description of any contracts, arrangements, or
21 understandings with respect to any security referred to in subsection
22 (1) of this section in which any acquiring party is involved, including
23 but not limited to transfer of any of the securities, joint ventures,
24 loan or option arrangements, puts or calls, guarantees of loans,
25 guarantees against loss or guarantees of profits, division of losses or
26 profits, or the giving or withholding of proxies. Such description
27 shall identify the persons with whom such contracts, arrangements, or
28 understandings have been entered into.

29 (h) A description of the purchase of any security referred to in
30 subsection (1) of this section during the twelve calendar months

1 preceding the filing of the statement, by any acquiring party,
2 including the dates of purchase, names of the purchasers, and
3 consideration paid or agreed to be paid therefor.

4 (i) A description of any recommendations to purchase any security
5 referred to in subsection (1) of this section made during the twelve
6 calendar months preceding the filing of the statement, by any acquiring
7 party, or by anyone based upon interviews or at the suggestion of such
8 acquiring party.

9 (j) Copies of all tender offers for, requests or invitations for
10 tenders of, exchange offers for, and agreements to acquire or exchange
11 any securities referred to in subsection (1) of this section, and, if
12 distributed, of additional soliciting material relating thereto.

13 (k) The term of any agreement, contract, or understanding made with
14 or proposed to be made with any broker-dealer as to solicitation or
15 securities referred to in subsection (1) of this section for tender,
16 and the amount of any fees, commissions, or other compensation to be
17 paid to broker-dealers with regard thereto.

18 (l) Such additional information as the commissioner may by rule or
19 regulation prescribe as necessary or appropriate for the protection of
20 policyholders of the insurer or in the public interest.

21 If the person required to file the statement referred to in
22 subsection (1) of this section is a partnership, limited partnership,
23 syndicate, or other group, the commissioner may require that the
24 information called for by (a) through (l) of this subsection shall be
25 given with respect to each partner of such partnership or limited
26 partnership, each member of such syndicate or group, and each person
27 who controls such partner or member. If any such partner, member, or
28 person is a corporation, or the person required to file the statement
29 referred to in subsection (1) of this section is a corporation the
30 commissioner may require that the information called for by (a) through

1 (1) of this subsection shall be given with respect to such corporation,
2 each officer and director of such corporation, and each person who is
3 directly or indirectly the beneficial owner of more than ten percent of
4 the outstanding voting securities of such corporation.

5 If any material change occurs in the facts set forth in the
6 statement filed with the commissioner and sent to such insurer pursuant
7 to this section, an amendment setting forth such change, together with
8 copies of all documents and other material relevant to such change,
9 shall be filed with the commissioner and sent to such insurer within
10 two business days after the person learns of such change.

11 (3) If any offer, request, invitation, agreement, or acquisition
12 referred to in subsection (1) of this section is proposed to be made by
13 means of a registration statement under the securities act of 1933 or
14 in circumstances requiring the disclosure of similar information under
15 the securities exchange act of 1934, or under a state law requiring
16 similar registration or disclosure, the person required to file the
17 statement referred to in subsection (1) of this section may utilize
18 such documents in furnishing the information called for by that
19 statement.

20 (4)(a) The commissioner shall approve any merger or other
21 acquisition of control referred to in subsection (1) of this section
22 unless, after a public hearing thereon, he or she finds that:

23 (i) After the change of control, the domestic insurer referred to
24 in subsection (1) of this section would not be able to satisfy the
25 requirements for the issuance of a license to write the line or lines
26 of insurance for which it is presently licensed;

27 (ii) The effect of the merger or other acquisition of control would
28 be substantially to lessen competition in insurance in this state or
29 tend to create a monopoly therein. In applying the competitive
30 standard in (a)(ii) of this subsection:

1 (A) The informational requirements of section 4(3)(a) of this act
2 and the standards of section 4(4)(b) of this act shall apply;

3 (B) The merger or other acquisition shall not be disapproved if the
4 commissioner finds that any of the situations meeting the criteria
5 provided by section 4(4)(c) of this act exist; and

6 (C) The commissioner may condition the approval of the merger or
7 other acquisition on the removal of the basis of disapproval within a
8 specified period of time;

9 (iii) The financial condition of any acquiring party is such as
10 might jeopardize the financial stability of the insurer, or prejudice
11 the interest of its policyholders;

12 (iv) The plans or proposals which the acquiring party has to
13 liquidate the insurer, sell its assets or consolidate or merge it with
14 any person, or to make any other material change in its business or
15 corporate structure or management, are unfair and unreasonable to
16 policyholders of the insurer and not in the public interest;

17 (v) The competence, experience, and integrity of those persons who
18 would control the operation of the insurer are such that it would not
19 be in the interest of policyholders of the insurer and of the public to
20 permit the merger or other acquisition of control; or

21 (vi) The acquisition is likely to be hazardous or prejudicial to
22 the insurance-buying public.

23 (b) The commissioner shall approve any exchange or other
24 acquisition of control referred to in RCW 48.31A.020 within sixty days
25 after he or she declares the statement filed pursuant to RCW 48.31A.020
26 to be complete and after holding a public hearing. At such hearing,
27 the person filing the statement, the insurer, and any person whose
28 significant interest is determined by the commissioner to be affected
29 thereby shall have the right to present evidence, examine and cross-
30 examine witnesses, and offer oral and written arguments and in

1 connection therewith shall be entitled to conduct discovery proceedings
2 in the same manner as is allowed in the superior court of this state.
3 All discovery proceedings shall be concluded not later than three days
4 prior to the commencement of the public hearing.

5 (c) The commissioner may retain at the acquiring person's expense
6 any attorneys, actuaries, accountants, and other experts not otherwise
7 a part of the commissioner's staff as may be reasonably necessary to
8 assist the commissioner in reviewing the proposed acquisition of
9 control. All reasonable costs of any hearing held pursuant to this
10 section, as determined by the commissioner, including costs associated
11 with the commissioner's use of investigatory, professional, and other
12 necessary personnel, mailing of required notices and other information,
13 and use of equipment or facilities, shall be paid before issuance of
14 the commissioner's order by the acquiring person.

15 (5) The provisions of this section shall not apply to:

16 (a) Any transaction which is subject to the provisions of RCW
17 48.31.010, dealing with the merger or consolidation of two or more
18 insurers.

19 (b) Any offer, request, invitation, agreement, or acquisition which
20 the commissioner by order shall exempt therefrom as: (i) Not having
21 been made or entered into for the purpose and not having the effect of
22 changing or influencing the control of a domestic insurer, or (ii)
23 otherwise not comprehended within the purposes of this section.

24 (6) The following shall be violations of this section:

25 (a) The failure to file any statement, amendment, or other material
26 required to be filed pursuant to subsection (1) or (2) of this section;
27 or

28 (b) The effectuation or any attempt to effectuate an acquisition of
29 control of, or merger with, a domestic insurer unless the commissioner
30 has given approval thereto.

1 (7) The courts of this state are hereby vested with jurisdiction
2 over every person not resident, domiciled, or authorized to do business
3 in this state who files a statement with the commissioner under this
4 section, and over all actions involving such person arising out of
5 violations of this section, and each such person shall be deemed to
6 have performed acts equivalent to and constituting an appointment by
7 such a person of the commissioner to be the person's true and lawful
8 attorney upon whom may be served all lawful process in any action,
9 suit, or proceeding arising out of violations of this section. Copies
10 of all such lawful process shall be served on the commissioner and
11 transmitted by registered or certified mail by the commissioner to such
12 person at the person's last known address.

13 NEW SECTION. **Sec. 4.** (1) The following definitions shall
14 apply for the purposes of this section only:

15 (a) "Acquisition" means any agreement, arrangement, or activity the
16 consummation of which results in a person acquiring directly or
17 indirectly the control of another person, and includes but is not
18 limited to the acquisition of voting securities, the acquisition of
19 assets, bulk reinsurance, and mergers.

20 (b) An "involved insurer" includes an insurer which either acquires
21 or is acquired, is affiliated with an acquirer or acquired, or is the
22 result of a merger.

23 (2)(a) Except as exempted in (b) of this subsection, this section
24 applies to any acquisition in which there is a change in control of an
25 insurer authorized to do business in this state.

26 (b) This section shall not apply to the following:

27 (i) An acquisition subject to approval or disapproval by the
28 commissioner pursuant to section 3 of this act;

1 (ii) A purchase of securities solely for investment purposes so
2 long as such securities are not used by voting or otherwise to cause or
3 attempt to cause the substantial lessening of competition in any
4 insurance market in this state. If a purchase of securities results in
5 a presumption of control under section 1(2) of this act, it is not
6 solely for investment purposes unless the commissioner of the insurer's
7 state of domicile accepts a disclaimer of control or affirmatively
8 finds that control does not exist and such disclaimer action or
9 affirmative finding is communicated by the domiciliary commissioner to
10 the commissioner of this state;

11 (iii) The acquisition of a person by another person when both
12 persons are neither directly nor through affiliates primarily engaged
13 in the business of insurance, if preacquisition notification is filed
14 with the commissioner in accordance with subsection (3)(a) of this
15 section sixty days prior to the proposed effective date of the
16 acquisition. However, such preacquisition notification is not required
17 for exclusion from this section if the acquisition would otherwise be
18 excluded from this section by this subsection (2)(b);

19 (iv) The acquisition of already affiliated persons;

20 (v) An acquisition if, as an immediate result of the acquisition:

21 (A) In no market would the combined market share of the involved
22 insurers exceed five percent of the total market;

23 (B) There would be no increase in any market share; or

24 (C) In no market would:

25 (I) The combined market share of the involved insurers exceed
26 twelve percent of the total market; and

27 (II) The market share increase by more than two percent of the
28 total market.

29 For the purpose of (b)(v) of this subsection, a market means direct
30 written insurance premium in this state for a line of business as

1 contained in the annual statement required to be filed by insurers
2 licensed to do business in this state;

3 (vi) An acquisition for which a preacquisition notification would
4 be required pursuant to this section due solely to the resulting effect
5 on the ocean marine insurance line of business;

6 (vii) An acquisition of an insurer whose domiciliary commissioner
7 affirmatively finds: That such insurer is in failing condition; there
8 is a lack of feasible alternative to improving such condition; the
9 public benefits of improving such insurer's condition through the
10 acquisition exceed the public benefits that would arise from not
11 lessening competition; and such findings are communicated by the
12 domiciliary commissioner to the commissioner of this state.

13 (3) An acquisition covered by subsection (2) of this section may be
14 subject to an order pursuant to subsection (5) of this section unless
15 the acquiring person files a preacquisition notification and the
16 waiting period has expired. The acquired person may file a
17 preacquisition notification.

18 (a) The preacquisition notification shall be in such form and
19 contain such information as prescribed by the commissioner relating to
20 those markets which, under subsection (2)(b)(v) of this section, cause
21 the acquisition not to be exempted from the provisions of this section.
22 The commissioner may require such additional material and information
23 as he or she deems necessary to determine whether the proposed
24 acquisition, if consummated, would violate the competitive standard of
25 subsection (4) of this section. The required information may include
26 an opinion of an economist as to the competitive impact of the
27 acquisition in this state accompanied by a summary of the education and
28 experience of such person indicating his or her ability to render an
29 informed opinion.

1 (b) The waiting period required shall begin on the date the
2 commissioner declares the preacquisition notification to be complete
3 and shall end on the earlier of the sixtieth day after the date of such
4 declaration, or termination of the waiting period by the commissioner.
5 Prior to the end of the waiting period, the commissioner on a one-time
6 basis may require the submission of additional needed information
7 relevant to the proposed acquisition, in which event the waiting period
8 shall end on the earlier of the sixtieth day after the commissioner
9 declares he or she has received such additional information or
10 termination of the waiting period by the commissioner.

11 (4)(a) The commissioner may enter an order under subsection (5)(a)
12 of this section with respect to an acquisition if there is substantial
13 evidence that the effect of the acquisition may be substantially to
14 lessen competition in any line of insurance in this state or tend to
15 create a monopoly therein or if the insurer fails to file adequate
16 information in compliance with subsection (3) of this section.

17 (b) In determining whether a proposed acquisition would violate the
18 competitive standard of (a) of this subsection, the commissioner shall
19 consider the following:

20 (i) Any acquisition covered under subsection (2) of this section
21 involving two or more insurers competing in the same market is prima
22 facie evidence of violation of the competitive standards:

23 (A) If the market is highly concentrated and the involved insurers
24 possess the following shares of the market:

25	Insurer A	Insurer B
26	4%	4% or more
27	10%	2% or more
28	15%	1% or more; or

1 (B) If the market is not highly concentrated and the involved
2 insurers possess the following shares of the market:

3	Insurer A	Insurer B
4	5%	5% or more
5	10%	4% or more
6	15%	3% or more
7	19%	1% or more

8 A highly concentrated market is one in which the share of the four
9 largest insurers is seventy-five percent or more of the market.
10 Percentages not shown in the tables are interpolated proportionately to
11 the percentages that are shown. If more than two insurers are
12 involved, exceeding the total of the two columns in the table is prima
13 facie evidence of violation of the competitive standard in (a) of this
14 subsection. For the purpose of (b)(i) of this subsection, the insurer
15 with the largest share of the market shall be deemed to be Insurer A.

16 (ii) There is a significant trend toward increased concentration
17 when the aggregate market share of any grouping of the largest insurers
18 in the market, from the two largest to the eight largest, has increased
19 by seven percent or more of the market over a period of time extending
20 from any base year five to ten years prior to the acquisition up to the
21 time of the acquisition. Any acquisition or merger covered under
22 subsection (2) of this section involving two or more insurers competing
23 in the same market is prima facie evidence of violation of the
24 competitive standard in (a) of this subsection if:

25 (A) There is a significant trend toward increased concentration in
26 the market;

1 (B) One of the insurers involved is one of the insurers in a
2 grouping of such large insurers showing the requisite increase in the
3 market share; and

4 (C) Another involved insurer's market is two percent or more.

5 (iii) For the purposes of (b) of this subsection:

6 (A) The term "insurer" includes any company or group of companies
7 under common management, ownership, or control;

8 (B) The term "market" means the relevant product and geographical
9 markets. In determining the relevant product and geographical markets,
10 the commissioner shall give due consideration to, among other things,
11 the definitions or guidelines, if any, promulgated by the national
12 association of insurance commissioners and to information, if any,
13 submitted by parties to the acquisition. In the absence of sufficient
14 information to the contrary, the relevant product market is assumed to
15 be the direct written insurance premium for a line of business, such
16 line being that used in the annual statement required to be filed by
17 insurers doing business in this state, and the relevant geographical
18 market is assumed to be this state;

19 (C) The burden of showing prima facie evidence of violation of the
20 competitive standard rests upon the commissioner.

21 (iv) Even though an acquisition is not prima facie violative of the
22 competitive standard under (b)(i) and (ii) of this subsection, the
23 commissioner may establish the requisite anticompetitive effect based
24 upon other substantial evidence. Even though an acquisition is prima
25 facie violative of the competitive standard under (b)(i) and (ii) of
26 this subsection, a party may establish the absence of the requisite
27 anticompetitive effect based upon other substantial evidence. Relevant
28 factors in making a determination under (b)(iv) of this subsection
29 include, but are not limited to, the following: Market shares,
30 volatility of ranking of market leaders, number of competitors,

1 concentration, trend of concentration in the industry, and ease of
2 entry and exit into the market.

3 (c) An order may not be entered under subsection (5)(a) of this
4 section if:

5 (i) The acquisition will yield substantial economies of scale or
6 economies in resource utilization that cannot be feasibly achieved in
7 any other way, and the public benefits which would arise from such
8 economies exceed the public benefits which would arise from not
9 lessening competition; or

10 (ii) The acquisition will substantially increase the availability
11 of insurance, and the public benefits of such increase exceed the
12 public benefits which would arise from not lessening competition.

13 (5)(a)(i) If an acquisition violates the standards of this section,
14 the commissioner may enter an order:

15 (A) Requiring an involved insurer to cease and desist from doing
16 business in this state with respect to the line or lines of insurance
17 involved in the violation; or

18 (B) Denying the application of an acquired or acquiring insurer for
19 a license to do business in this state.

20 (ii) Such an order shall not be entered unless: (A) There is a
21 hearing; (B) notice of such hearing is issued prior to the end of the
22 waiting period and not less than fifteen days prior to the hearing; and
23 (C) the hearing is concluded and the order is issued no later than
24 sixty days after the end of the waiting period. Every order shall be
25 accompanied by a written decision of the commissioner setting forth his
26 or her findings of fact and conclusions of law.

27 (iii) An order entered under (a) of this subsection shall not
28 become final earlier than thirty days after it is issued, during which
29 time the involved insurer may submit a plan to remedy the
30 anticompetitive impact of the acquisition within a reasonable time.

1 Based upon such plan or other information, the commissioner shall
2 specify the conditions, if any, under the time period during which the
3 aspects of the acquisition causing a violation of the standards of this
4 section would be remedied and the order vacated or modified.

5 (iv) An order pursuant to (a) of this subsection shall not apply if
6 the acquisition is not consummated.

7 (b) Any person who violates a cease and desist order of the
8 commissioner under (a) of this subsection and while such order is in
9 effect, may, after notice and hearing and upon order of the
10 commissioner, be subject at the discretion of the commissioner to any
11 one or more of the following:

12 (i) A monetary penalty of not more than ten thousand dollars for
13 every day of violation; or

14 (ii) Suspension or revocation of such person's license; or

15 (iii) Both (b)(i) and (b)(ii) of this subsection.

16 (c) Any insurer or other person who fails to make any filing
17 required by this section and who also fails to demonstrate a good faith
18 effort to comply with any such filing requirement, shall be subject to
19 a civil penalty of not more than fifty thousand dollars.

20 (6) Sections 9 (2) and (3) and 11 of this act do not apply to
21 acquisitions covered under subsection (2) of this section.

22 NEW SECTION. **Sec. 5.** (1) Every insurer which is authorized to
23 do business in this state and which is a member of an insurance holding
24 company system shall register with the commissioner, except a foreign
25 insurer subject to registration requirements and standards adopted by
26 statute or regulation in the jurisdiction of its domicile which are
27 substantially similar to those contained in:

28 (a) This section;

29 (b) Section 6(1)(a), (2), and (4) of this act; and

1 (c) Either section 6(1)(b) of this act or a provision such as the
2 following: Each registered insurer shall keep current the information
3 required to be disclosed in its registration statement by reporting all
4 material changes or additions within fifteen days after the end of the
5 month in which it learns of each such change or addition.

6 Any insurer which is subject to registration under this section
7 shall register within fifteen days after it becomes subject to
8 registration, and annually thereafter by May 15 of each year for the
9 previous calendar year, unless the commissioner for good cause shown
10 extends the time for registration, and then within such extended time.
11 The commissioner may require any insurer authorized to do business in
12 the state which is a member of a holding company system, and which is
13 not subject to registration under this section, to furnish a copy of
14 the registration statement, the summary specified in subsection (3) of
15 this section or other information filed by such insurance company with
16 the insurance regulatory authority of its domiciliary jurisdiction.

17 (2) Every insurer subject to registration shall file the
18 registration statement on a form prescribed by the commissioner, which
19 shall contain the following current information:

20 (a) The capital structure, general financial condition, ownership,
21 and management of the insurer and any person controlling the insurer;

22 (b) The identity and relationship of every member of the insurance
23 holding company system;

24 (c) The following agreements in force, and transactions currently
25 outstanding or which have occurred during the last calendar year
26 between such insurer and its affiliates:

27 (i) Loans, other investments, or purchases, sales, or exchanges of
28 securities of the affiliates by the insurer or of the insurer by its
29 affiliates;

30 (ii) Purchases, sales, or exchange of assets;

1 (iii) Transactions not in the ordinary course of business;

2 (iv) Guarantees or undertakings for the benefit of an affiliate
3 which result in an actual contingent exposure of the insurer's assets
4 to liability, other than insurance contracts entered into in the
5 ordinary course of the insurer's business;

6 (v) All management agreements, service contracts, and all cost-
7 sharing arrangements;

8 (vi) Reinsurance agreements;

9 (vii) Dividends and other distributions to shareholders; and

10 (viii) Consolidated tax allocation agreements;

11 (d) Any pledge of the insurer's stock, including stock of any
12 subsidiary or controlling affiliate, for a loan made to any member of
13 the insurance holding company system;

14 (e) Other matters concerning transactions between registered
15 insurers and any affiliates as may be included from time to time in any
16 registration forms adopted or approved by the commissioner.

17 (3) All registration statements shall contain a summary outlining
18 all items in the current registration statement representing changes
19 from the prior registration statement.

20 (4) No information need be disclosed on the registration statement
21 filed pursuant to subsection (2) of this section if such information is
22 not material for the purposes of this section. Unless the commissioner
23 by rule, regulation, or order provides otherwise, sales, purchases,
24 exchanges, loans or extensions of credit, investments, or guarantees
25 involving one-half of one percent or less of an insurer's admitted
26 assets as of the 31st day of the previous December shall not be deemed
27 material for purposes of this section.

28 (5) Subject to section 6(2) of this act, each registered insurer
29 shall report to the commissioner all dividends and other distributions

1 to shareholders within fifteen business days following the declaration
2 thereof.

3 (6) Any person within an insurance holding company system subject
4 to registration shall be required to provide complete and accurate
5 information to an insurer, where such information is reasonably
6 necessary to enable the insurer to comply with the provisions of this
7 chapter.

8 (7) The commissioner shall terminate the registration of any
9 insurer which demonstrates that it no longer is a member of an
10 insurance holding company system.

11 (8) The commissioner may require or allow two or more affiliated
12 insurers subject to registration under this section to file a
13 consolidated registration statement.

14 (9) The commissioner may allow an insurer which is authorized to do
15 business in this state and which is part of an insurance holding
16 company system to register on behalf of any affiliated insurer which is
17 required to register under section 5(1) of this act and to file all
18 information and material required to be filed under this section.

19 (10) The provisions of this section shall not apply to any insurer,
20 information, or transaction if and to the extent that the commissioner
21 by rule, regulation, or order shall exempt the same from the provisions
22 of this section.

23 (11) Any person may file with the commissioner a disclaimer of
24 affiliation with any authorized insurer or such a disclaimer may be
25 filed by such insurer or any member of an insurance holding company
26 system. The disclaimer shall fully disclose all material relationships
27 and bases for affiliation between such person and such insurer as well
28 as the basis for disclaiming such affiliation. After a disclaimer has
29 been filed, the insurer shall be relieved of any duty to register or
30 report under this section which may arise out of the insurer's

1 relationship with such person unless and until the commissioner
2 disallows such a disclaimer. The commissioner shall disallow such a
3 disclaimer only after furnishing all parties in interest with notice
4 and opportunity to be heard and after making specific findings of fact
5 to support such disallowance.

6 (12) The failure to file a registration statement or any summary of
7 the registration statement thereto required by this section within the
8 time specified for such filing shall be a violation of this section.

9 NEW SECTION. **Sec. 6.** (1)(a) Transactions within a holding
10 company system to which an insurer subject to registration is a party
11 shall be subject to the following standards:

12 (i) The terms shall be fair and reasonable;

13 (ii) Charges or fees for services performed shall be fair and
14 reasonable;

15 (iii) Expenses incurred and payment received shall be allocated to
16 the insurer in conformity with customary insurance accounting practices
17 consistently applied;

18 (iv) The books, accounts, and records of each party to all such
19 transactions shall be so maintained as to clearly and accurately
20 disclose the nature and details of the transactions including such
21 accounting information as is necessary to support the reasonableness of
22 the charges or fees to the respective parties; and

23 (v) The insurer's surplus as regards policyholders following any
24 dividends or distributions to shareholder affiliates shall be
25 reasonable in relation to the insurer's outstanding liabilities and
26 adequate to its financial needs.

27 (b) The following transactions involving a domestic insurer and any
28 person in its holding company system may not be entered into unless the
29 insurer has notified the commissioner in writing of its intention to

1 enter into such transaction at least sixty days prior thereto, or such
2 shorter period as the commissioner may permit, and the commissioner has
3 not disapproved it within such period:

4 (i) Sales, purchases, exchanges, loans or extensions of credit,
5 guarantees, or investments provided such transactions are equal to or
6 exceed: (A) With respect to nonlife insurers, the lesser of three
7 percent of the insurer's admitted assets or twenty-five percent of
8 surplus as regards policyholders; (B) with respect to life insurers,
9 three percent of the insurer's admitted assets; each as of the 31st day
10 of the previous December;

11 (ii) Loans or extensions of credit to any person who is not an
12 affiliate, where the insurer makes such loans or extensions of credit
13 with the agreement or understanding that the proceeds of such
14 transactions, in whole or in substantial part, are to be used to make
15 loans or extensions of credit to, to purchase assets of, or to make
16 investments in, any affiliate of the insurer making such loans or
17 extensions of credit provided such transactions are equal to or exceed:
18 (A) With respect to nonlife insurers, the lesser of three percent of
19 the insurer's admitted assets or twenty-five percent of surplus as
20 regards policyholders; (B) with respect to life insurers, three percent
21 of the insurer's admitted assets; each as of the 31st day of the
22 previous December;

23 (iii) Reinsurance agreements or modifications thereto in which the
24 reinsurance premium or a change in the insurer's liabilities equals or
25 exceeds five percent of the insurer's surplus as regards policyholders,
26 as of the 31st day of the previous December, including those agreements
27 which may require as consideration the transfer of assets from an
28 insurer to a nonaffiliate, if an agreement or understanding exists
29 between the insurer and nonaffiliate that any portion of such assets
30 will be transferred to one or more affiliates of the insurer;

1 (iv) All management agreements, service contracts, and all cost-
2 sharing arrangements; and

3 (v) Any material transactions, specified by regulation, which the
4 commissioner determines may adversely affect the interests of the
5 insurer's policyholders.

6 Nothing contained in this section shall be deemed to authorize or
7 permit any transactions which, in the case of an insurer not a member
8 of the same holding company system, would be otherwise contrary to law.

9 (c) A domestic insurer may not enter into transactions which are
10 part of a plan or series of like transactions with persons within the
11 holding company system if the purpose of those separate transactions is
12 to avoid the statutory threshold amount and thus avoid the review that
13 would occur otherwise. If the commissioner determines that such
14 separate transactions were entered into over any twelve-month period
15 for such purpose, the commissioner may apply for an order as described
16 in section 9(1) of this act.

17 (d) The commissioner, in reviewing transactions pursuant to (b) of
18 this subsection, shall consider whether the transactions comply with
19 the standards set forth in (a) of this subsection and whether they may
20 adversely affect the interests of policyholders.

21 (e) The commissioner shall be notified within thirty days of any
22 investment of the domestic insurer in any one corporation if the total
23 investment in such corporation by the insurance holding company system
24 exceeds ten percent of such corporation's voting securities.

25 (2)(a) No domestic insurer shall pay any extraordinary dividend or
26 make any other extraordinary distribution to its shareholders until:
27 (i) Thirty days after the commissioner has received notice of the
28 declaration thereof and has not within such period disapproved such
29 payment; or (ii) the commissioner shall have approved such payment
30 within such thirty-day period.

1 (b) For purposes of this section, an extraordinary dividend or
2 distribution includes any dividend or distribution of cash or other
3 property, whose fair market value together with that of other dividends
4 or distributions made within the preceding twelve months exceeds the
5 lesser of: (i) Ten percent of such insurer's surplus as regards
6 policyholders as of the 31st day of the previous December; or (ii) the
7 net gain from operations of such insurer, if such insurer is a life
8 insurer or the net income, if such insurer is not a life insurer, not
9 including realized capital gains, for the twelve-month period ending
10 the 31st day of the previous December, but shall not include pro rata
11 distributions of any class of the insurer's own securities. In
12 determining whether a dividend or distribution is extraordinary, an
13 insurer other than a life insurer may carry forward net income from the
14 previous two calendar years that has not already been paid out as
15 dividends. This carry-forward shall be computed by taking the net
16 income from the second and third preceding calendar years, not
17 including realized capital gains, less dividends paid in the second and
18 immediate preceding calendar years.

19 (c) Notwithstanding any other provision of law, an insurer may
20 declare an extraordinary dividend or distribution which is conditional
21 upon the commissioner's approval thereof, and such a declaration shall
22 confer no rights upon shareholders until: (i) The commissioner has
23 approved the payment of such a dividend or distribution; or (ii) the
24 commissioner has not disapproved such payment within the thirty-day
25 period referred to in this subsection (2)(c).

26 (3) For purposes of this chapter, in determining whether an
27 insurer's surplus as regards policyholders is reasonable in relation to
28 the insurer's outstanding liabilities and adequate to its financial
29 needs, the following factors, among others, shall be considered:

1 (a) The size of the insurer as measured by its assets, capital and
2 surplus, reserves, premium writings, insurance in force, and other
3 appropriate criteria;

4 (b) The extent to which the insurer's business is diversified among
5 the several lines of insurance;

6 (c) The number and size of risks insured in each line of business;

7 (d) The extent of the geographical dispersion of the insurer's
8 insured risks;

9 (e) The nature and extent of the insurer's reinsurance program;

10 (f) The quality, diversification, and liquidity of the insurer's
11 investment portfolio;

12 (g) The recent past and projected future trend in the size of the
13 insurer's investment portfolio;

14 (h) The surplus as regards policyholders maintained by other
15 comparable insurers;

16 (i) The adequacy of the insurer's reserves; and

17 (j) The quality and liquidity of investments in affiliates. The
18 commissioner may treat any such investment as a disallowed asset for
19 purposes of determining the adequacy of surplus as regards
20 policyholders whenever in his or her judgment such investment so
21 warrants.

22 NEW SECTION. **Sec. 7.** (1) Subject to the limitation contained
23 in this section and in addition to the powers which the commissioner
24 has under chapter 48.03 RCW relating to the examination of insurers,
25 the commissioner shall also have the power to order any insurer
26 registered under section 5 of this act to produce such records, books,
27 or other information papers in the possession of the insurer or its
28 affiliates as are reasonably necessary to ascertain the financial
29 condition of such insurer or to determine compliance with this title.

1 In the event such insurer fails to comply with such order, the
2 commissioner shall have the power to examine such affiliates to obtain
3 such information.

4 (2) The commissioner may retain at the registered insurer's expense
5 such attorneys, actuaries, accountants, and other experts not otherwise
6 a part of the commissioner's staff as shall be reasonably necessary to
7 assist in the conduct of the examination under subsection (1) of this
8 section. Any persons so retained shall be under the direction and
9 control of the commissioner and shall act in a purely advisory
10 capacity.

11 (3) Each registered insurer producing for examination records,
12 books, and papers pursuant to subsection (1) of this section shall be
13 liable for and shall pay the expense of such examination in accordance
14 with RCW 48.03.060.

15 NEW SECTION. **Sec. 8.** The commissioner may, upon notice and
16 opportunity for all interested persons to be heard, issue such rules,
17 regulations, and orders as shall be necessary to carry out the
18 provisions of this chapter.

19 NEW SECTION. **Sec. 9.** (1) Whenever it appears to the
20 commissioner that any insurer or any director, officer, employee, or
21 agent thereof has committed or is about to commit a violation of this
22 chapter or any rule, regulation, or order issued by the commissioner
23 under this chapter, the commissioner may apply to the superior court
24 for Thurston county or to the court for the county in which the
25 principal office of the insurer is located for an order enjoining such
26 insurer or such director, officer, employee, or agent thereof from
27 violating or continuing to violate this chapter or any such rule,
28 regulation, or order, and for such other equitable relief as the nature

1 of the case and the interest of the insurer's policyholders, creditors,
2 and shareholders or the public may require.

3 (2) No security which is the subject of any agreement or
4 arrangement regarding acquisition, or which is acquired or to be
5 acquired, in contravention of the provisions of this chapter or of any
6 rule, regulation, or order issued by the commissioner under this
7 chapter may be voted at any shareholders' meeting, or may be counted
8 for quorum purposes, and any action of shareholders requiring the
9 affirmative vote of a percentage of shares may be taken as though such
10 securities were not issued and outstanding, but no action taken at any
11 such meeting shall be invalidated by the voting of such securities,
12 unless the action would materially affect control of the insurer or
13 unless the courts of this state have so ordered. If an insurer or the
14 commissioner has reason to believe that any security of the insurer has
15 been or is about to be acquired in contravention of the provisions of
16 this chapter or of any rule, regulation, or order issued by the
17 commissioner under this chapter, the insurer or the commissioner may
18 apply to the superior court for Thurston county or to the court for the
19 county in which the insurer has its principal place of business to
20 enjoin any offer, request, invitation, agreement, or acquisition made
21 in contravention of section 3 of this act or any rule, regulation, or
22 order issued by the commissioner thereunder to enjoin the voting of any
23 security so acquired, to void any vote of such security already cast at
24 any meeting of shareholders, and for such other relief as the nature of
25 the case and the interest of the insurer's policyholders, creditors,
26 and shareholders or the public may require.

27 (3) In any case where a person has acquired or is proposing to
28 acquire any voting securities in violation of this chapter or any rule,
29 regulation, or order issued by the commissioner under this chapter, the
30 superior court for Thurston county or the court for the county in which

1 the insurer has its principal place of business to seize or sequester
2 voting securities may, on such notice as the court deems appropriate,
3 upon the application of the insurer or the commissioner seize or
4 sequester any voting securities of the insurer owned directly or
5 indirectly by such person, and issue such order with respect thereto as
6 may be appropriate to effectuate the provisions of this chapter.

7 Notwithstanding any other provisions of law, for the purposes of
8 this chapter, the situs of the ownership of the securities of domestic
9 insurers shall be deemed to be in this state.

10 NEW SECTION. **Sec. 10.** (1) Any insurer failing, without just
11 cause, to file any registration statement as required in this chapter
12 shall be required by the commissioner, after notice and hearing, to pay
13 a penalty of not more than ten thousand dollars per day. The maximum
14 penalty under this section is one million dollars. The commissioner
15 may reduce the penalty if the insurer demonstrates to the commissioner
16 that the imposition of the penalty would constitute a financial
17 hardship to the insurer. Any fine collected under this section shall
18 be paid by the commissioner to the state treasurer for the account of
19 the general fund.

20 (2) Every director or officer of an insurance holding company
21 system who knowingly violates this chapter, or participates in, or
22 assents to, or who knowingly shall permit any of the officers or agents
23 of the insurer to engage in transactions or make investments which have
24 not been properly reported or submitted pursuant to section 5(1) or
25 6(1)(b) or (2) of this act, or which violate this chapter, shall pay,
26 in their individual capacity, a civil forfeiture of not more than ten
27 thousand dollars per violation, after notice and hearing before the
28 commissioner. In determining the amount of the civil forfeiture, the
29 commissioner shall take into account the appropriateness of the

1 forfeiture with respect to the gravity of the violation, the history of
2 previous violations, and such other matters as justice may require.

3 (3) Whenever it appears to the commissioner that any insurer
4 subject to this chapter or any director, officer, employee, or agent
5 thereof has engaged in any transaction or entered into a contract which
6 is subject to section 6 of this act and which would not have been
7 approved had such approval been requested, the commissioner may order
8 the insurer to cease and desist immediately any further activity under
9 that transaction or contract. After notice and hearing the
10 commissioner may also order the insurer to void any such contracts and
11 restore the status quo if such action is in the best interest of the
12 policyholders, creditors, or the public.

13 (4) Whenever it appears to the commissioner that any insurer or any
14 director, officer, employee, or agent thereof has committed a willful
15 violation of this chapter, the commissioner may refer the matter to the
16 prosecuting attorney of Thurston county or the county in which the
17 principal office of the insurer is located. Any insurer that willfully
18 violates this chapter may be fined not more than one million dollars.
19 Any individual who willfully violates this chapter may be fined in his
20 or her individual capacity not more than ten thousand dollars, or be
21 imprisoned for not more than three years, or both.

22 (5) Any officer, director, or employee of an insurance holding
23 company system who willfully and knowingly subscribes to or makes or
24 causes to be made any false statements or false reports or false
25 filings with the intent to deceive the commissioner in the performance
26 of his or her duties under this chapter, upon conviction thereof, shall
27 be imprisoned for not more than three years or fined not more than ten
28 thousand dollars or both. Any fines imposed shall be paid by the
29 officer, director, or employee in his or her individual capacity.

1 NEW SECTION. **Sec. 11.** Whenever it appears to the commissioner
2 that any person has committed a violation of this chapter which so
3 impairs the financial condition of a domestic insurer as to threaten
4 insolvency or make the further transaction of business by it hazardous
5 to its policyholders, creditors, shareholders, or the public, then the
6 commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to
7 take possession of the property of such domestic insurer and to conduct
8 the business thereof.

9 NEW SECTION. **Sec. 12.** (1) If an order for liquidation or
10 rehabilitation of a domestic insurer has been entered, the receiver
11 appointed under such order shall have a right to recover on behalf of
12 the insurer: (a) From any parent corporation or holding company or
13 person or affiliate who otherwise controlled the insurer, the amount of
14 distributions, other than distributions of shares of the same class of
15 stock, paid by the insurer on its capital stock; or (b) any payment in
16 the form of a bonus, termination settlement, or extraordinary lump sum
17 salary adjustment made by the insurer or its subsidiary to a director,
18 officer, or employee, where the distribution or payment pursuant to (a)
19 or (b) of this subsection is made at any time during the one year
20 preceding the petition for liquidation, conservation, or
21 rehabilitation, as the case may be, subject to the limitations of
22 subsections (2), (3), and (4) of this section.

23 (2) No such distribution shall be recoverable if it is shown that
24 when paid such distribution was lawful and reasonable, and that the
25 insurer did not know and could not reasonably have known that such
26 distribution might adversely affect the ability of the insurer to
27 fulfill its contractual obligations.

28 (3) Any person who was a parent corporation or holding company or
29 a person who otherwise controlled the insurer or affiliate at the time

1 such distributions were paid shall be liable up to the amount of
2 distributions or payments under subsection (1) of this section such
3 person received. Any person who controlled the insurer at the time
4 such distributions were declared shall be liable up to the amount of
5 distributions he or she would have received if they had been paid
6 immediately. If two or more persons are liable with respect to the
7 same distributions, they shall be jointly and severally liable.

8 (4) The maximum amount recoverable under this section shall be the
9 amount needed in excess of all other available assets of the impaired
10 or insolvent insurer to pay the contractual obligations of the impaired
11 or insolvent insurer and to reimburse any guaranty funds.

12 (5) To the extent that any person liable under subsection (3) of
13 this section is insolvent or otherwise fails to pay claims due from it
14 pursuant to such provisions, its parent corporation or holding company
15 or person who otherwise controlled it at the time the distribution was
16 paid, shall be jointly and severally liable for any resulting
17 deficiency in the amount recovered from such parent corporation or
18 holding company or person who otherwise controlled it.

19 NEW SECTION. **Sec. 13.** Whenever it appears to the commissioner
20 that any person has committed a violation of this chapter which makes
21 the continued operation of an insurer contrary to the interests of
22 policyholders or the public, the commissioner may, after giving notice
23 and an opportunity to be heard, determine to suspend, revoke, or refuse
24 to renew such insurer's license or authority to do business in this
25 state for such period as he or she finds is required for the protection
26 of policyholders or the public. Any such determination shall be
27 accompanied by specific findings of fact and conclusions of law.

1 NEW SECTION. **Sec. 14.** (1) Any person aggrieved by any act,
2 determination, rule, regulation, or order, or any other action of the
3 commissioner pursuant to this chapter may proceed in accordance with
4 the administrative procedure act, chapter 34.05 RCW.

5 (2) Any person aggrieved by any failure of the commissioner to act
6 or make a determination required by this chapter may petition the
7 commissioner under the procedure described in RCW 34.05.330.

8 NEW SECTION. **Sec. 15.** This chapter may be known and cited as
9 the business transacted with broker controlled property and casualty
10 insurer act.

11 NEW SECTION. **Sec. 16.** Unless the context clearly requires
12 otherwise, the definitions in this section apply throughout this
13 chapter.

14 (1) "Accredited state" means a state in which the insurance
15 department or regulatory agency has qualified as meeting the minimum
16 financial regulatory standards promulgated and established from time to
17 time by the national association of insurance commissioners.

18 (2) "Control" or "controlled by" has the meaning ascribed in
19 section 1(2) of this act.

20 (3) "Controlled insurer" means a licensed insurer which is
21 controlled, directly or indirectly, by a broker.

22 (4) "Controlling producer" means a broker who, directly or
23 indirectly, controls an insurer.

24 (5) "Licensed insurer" or "insurer" means any person, firm,
25 association, or corporation duly licensed to transact property and
26 casualty insurance business in this state. The following, inter alia,
27 are not licensed insurers for purposes of this chapter:

1 (a) All risk retention groups as defined in the superfund
2 amendments reauthorization act of 1986, P.L. 99-499, 100 Stat. 1613
3 (1986), the risk retention act, 15 U.S.C. Sec. 3901 et seq. (1982 &
4 Supp. 1986), and chapter 48.92 RCW;

5 (b) All residual market pools and joint underwriting associations;
6 and

7 (c) All captive insurers. For the purposes of this chapter,
8 captive insurers are insurance companies owned by another organization,
9 whose exclusive purpose is to insure risks of the parent organization
10 and affiliated companies or, in the case of groups and associations,
11 insurance organizations owned by the insureds whose exclusive purpose
12 is to insure risks to member organizations or group members, or both,
13 and their affiliates.

14 (6) "Broker" means an insurance broker or brokers or any other
15 person, firm, association, or corporation, when, for any compensation,
16 commission, or other thing of value, such person, firm, association, or
17 corporation acts or aids in any manner in soliciting, negotiating, or
18 procuring the making of any insurance contract on behalf of an insured
19 other than the person, firm, association, or corporation.

20 NEW SECTION. **Sec. 17.** This chapter shall apply to licensed
21 insurers as defined in section 16 of this act, either domiciled in this
22 state or domiciled in a state that is not an accredited state having in
23 effect a substantially similar law. All provisions of the insurance
24 holding company act, chapter 48.31A RCW, or its successor act, to the
25 extent they are not superseded by this chapter, shall continue to
26 apply to all parties within the holding company systems subject to this
27 chapter.

1 NEW SECTION. **Sec. 18.** (1)(a) The provisions of this section
2 shall apply if, in any calendar year, the aggregate amount of gross
3 written premium on business placed with a controlled insurer by a
4 controlling broker is equal to or greater than five percent of the
5 admitted assets of the controlled insurer, as reported in the
6 controlled insurer's quarterly statement filed as of September 30 of
7 the prior year.

8 (b) Notwithstanding (a) of this subsection, the provisions of this
9 section shall not apply if:

10 (i) The controlling producer:

11 (A) Places insurance only with the controlled insurer; or only with
12 the controlled insurer and a member or members of the controlled
13 insurer's holding company system, or the controlled insurer's parent,
14 affiliate, or subsidiary and receives no compensation based upon the
15 amount of premiums written in connection with such insurance; and

16 (B) Accepts insurance placements only from nonaffiliated
17 subbrokers, and not directly from insureds; and

18 (ii) The controlled insurer, except for business written through a
19 residual market facility such as the assigned risk plan, fair plans, or
20 other such plans, accepts insurance business only from a controlling
21 broker, a broker controlled by the controlled insurer, or a broker that
22 is a subsidiary of the controlled insurer.

23 (2) A controlled insurer shall not accept business from a
24 controlling broker and a controlling broker shall not place business
25 with a controlled insurer unless there is a written contract between
26 the controlling broker and the insurer specifying the responsibilities
27 of each party, which contract has been approved by the board of
28 directors of the insurer and contains the following minimum provisions:

29 (a) The controlled insurer may terminate the contract for cause,
30 upon written notice to the controlling broker. The controlled insurer

1 shall suspend the authority of the controlling broker to write business
2 during the pendency of any dispute regarding the cause for the
3 termination;

4 (b) The controlling broker shall render accounts to the controlling
5 insurer detailing all material transactions, including information
6 necessary to support all commissions, charges, and other fees received
7 by, or owing to, the controlling broker;

8 (c) The controlling broker shall remit all funds due under the
9 terms of the contract to the controlling insurer on at least a monthly
10 basis. The due date shall be fixed so that premiums or installments
11 thereof collected shall be remitted no later than ninety days after the
12 effective date of any policy placed with the controlling insurer under
13 this contract;

14 (d) All funds collected for the controlled insurer's account shall
15 be held by the controlling broker in a fiduciary capacity, in one or
16 more appropriately identified bank accounts in banks that are members
17 of the federal reserve system, in accordance with the applicable
18 provisions of this title. However, funds of a controlling broker not
19 required to be licensed in this state shall be maintained in compliance
20 with the requirements of the controlling broker's domiciliary
21 jurisdiction;

22 (e) The controlling broker shall maintain separately identifiable
23 records of business written for the controlled insurer;

24 (f) The contract shall not be assigned in whole or in part by the
25 controlling broker;

26 (g) The controlled insurer shall provide the controlling broker
27 with its underwriting standards, rules, and procedures, manuals setting
28 forth the rates to be charged, and the conditions for the acceptance or
29 rejection of risks. The controlling producer shall adhere to such
30 standards, rules, procedures, rates, and conditions, which shall be the

1 same as those applicable to comparable business placed with the
2 controlled insurer by a broker other than the controlling broker;

3 (h) The rates of the controlling broker's commissions, charges, and
4 other fees shall be no greater than those applicable to comparable
5 business placed with the controlled insurer by brokers other than
6 controlling brokers. For purposes of (g) and (h) of this subsection,
7 examples of comparable business include the same lines of insurance,
8 same kinds of insurance, same kinds of risks, similar policy limits,
9 and similar quality of business;

10 (i) If the contract provides that the controlling broker, on
11 insurance business placed with the insurer, is to be compensated
12 contingent upon the insurer's profits on that business, then such
13 compensation shall not be determined and paid until at least five years
14 after the premiums on liability insurance are earned and at least one
15 year after the premiums are earned on any other insurance. In no event
16 shall the commissions be paid until the adequacy of the controlled
17 insurer's reserves on remaining claims has been independently verified
18 pursuant to subsection (3) of this section;

19 (j) The insurer may establish a different limit on the controlling
20 broker's writings in relation to the controlled insurer's surplus and
21 total writings for each line or subline of business. The controlled
22 insurer shall notify the controlling broker when the applicable limit
23 is approached and shall not accept business from the controlling broker
24 if the limit is reached. The controlling broker shall not place
25 business with the controlled insurer if it has been notified by the
26 controlled insurer that the limit has been reached; and

27 (k) The controlling broker may negotiate but shall not bind
28 reinsurance on behalf of the controlled insurer on business the
29 controlling broker places with the controlled insurer, except that the
30 controlling broker may bind facultative reinsurance contracts pursuant

1 to obligatory facultative agreements if the contract with the
2 controlled insurer contains underwriting guidelines including, for both
3 reinsurance assumed and ceded, a list of reinsurers with which such
4 automatic agreements are in effect, the coverages and amounts of
5 percentages that may be reinsured, and commission schedules.

6 (3) Every controlled insurer shall have an audit committee of the
7 board of directors composed of independent directors. The audit
8 committee shall annually meet with management, the insurer's
9 independent certified public accountants, and an independent casualty
10 actuary or other independent loss reserve specialist acceptable to the
11 commissioner to review the adequacy of the insurer's loss reserves.

12 (4)(a) In addition to any other required loss reserve
13 certification, the controlled insurer shall, annually, on April 1 of
14 each year, file with the commissioner an opinion of an independent
15 casualty actuary, or such other independent loss reserve specialist
16 acceptable to the commissioner, reporting loss ratios for each line of
17 business written and attesting to the adequacy of loss reserves
18 established for losses incurred and outstanding as of year-end,
19 including losses incurred but not reported, on business placed by the
20 broker; and

21 (b) The controlled insurer shall annually report to the
22 commissioner the amount of commissions paid to the producer, the
23 percentage such amount represents of the net premiums written and
24 comparable amounts and percentages paid to noncontrolling brokers for
25 placements of the same kinds of insurance.

26 NEW SECTION. **Sec. 19.** The broker, prior to the effective date
27 of the policy, shall deliver written notice to the prospective insured
28 disclosing the relationship between the broker and the controlled
29 insurer, except that, if the business is placed through a subbroker who

1 is not a controlling broker, the controlling broker shall retain in his
2 or her records a signed commitment from the subbroker that the
3 subbroker is aware of the relationship between the insurer and the
4 broker and that the subbroker has or will notify the insured.

5 NEW SECTION. **Sec. 20.** (1)(a) If the commissioner believes that
6 the controlling broker or any other person has not materially complied
7 with this chapter, or any regulation or order promulgated under this
8 chapter, after notice and opportunity to be heard, the commissioner may
9 order the controlling broker to cease placing business with the
10 controlled insurer; and

11 (b) If it was found that because of such material noncompliance
12 that the controlled insurer or any policyholder thereof has suffered
13 any loss or damage, the commissioner may maintain a civil action or
14 intervene in an action brought by or on behalf of the insurer or
15 policyholder for recovery of compensatory damages for the benefit of
16 the insurer or policyholder or other appropriate relief.

17 (2) If an order for liquidation or rehabilitation of the controlled
18 insurer has been entered pursuant to chapter 48.32 RCW, and the
19 receiver appointed under that order believes that the controlling
20 broker or any other person has not materially complied with this
21 chapter, or any regulation or order promulgated under this chapter, and
22 the insurer suffered any loss or damage therefrom, the receiver may
23 maintain a civil action for recovery of damages or other appropriate
24 sanctions for the benefit of the insurer.

25 (3) Nothing contained in this section shall affect the right of the
26 commissioner to impose any other penalties provided for in this title.

27 (4) Nothing contained in this section is intended to or shall in
28 any manner alter or affect the rights of policyholders, claimants,
29 creditors, or other third parties.

1 NEW SECTION. **Sec. 21.** This chapter may be cited as the
2 reinsurance intermediary act.

3 NEW SECTION. **Sec. 22.** As used in this chapter:

4 (1) "Actuary" means a person who is a member in good standing of
5 the american academy of actuaries.

6 (2) "Controlling person" means any person, firm, association, or
7 corporation who directly or indirectly has the power to direct or cause
8 to be directed, the management, control, or activities of the
9 reinsurance intermediary.

10 (3) "Insurer" means insurer as defined in RCW 48.01.050.

11 (4) "Licensed producer" means an agent, broker, or reinsurance
12 intermediary licensed pursuant to the applicable provisions of this
13 title.

14 (5) "Reinsurance intermediary" means a reinsurance intermediary-
15 broker or a reinsurance intermediary-manager as these terms are defined
16 in subsections (6) and (7) of this section.

17 (6) "Reinsurance intermediary-broker" means any person, other than
18 an officer or employee of the ceding insurer, firm, association, or
19 corporation who solicits, negotiates, or places reinsurance cessions or
20 retrocessions on behalf of a ceding insurer without the authority or
21 power to bind reinsurance on behalf of such insurer.

22 (7) "Reinsurance intermediary-manager" means any person, firm,
23 association, or corporation who has authority to bind or manages all or
24 part of the assumed reinsurance business of a reinsurer, including the
25 management of a separate division, department, or underwriting office,
26 and acts as an agent for such reinsurer whether known as a reinsurance
27 intermediary-manager, manager, or other similar term. Notwithstanding
28 this subsection, the following persons shall not be considered a

1 reinsurance intermediary-manager, with respect to such reinsurer, for
2 the purposes of this chapter:

3 (a) An employee of the reinsurer;

4 (b) A United States manager of the United States branch of an alien
5 reinsurer;

6 (c) An underwriting manager which, pursuant to contract, manages
7 all the reinsurance operations of the reinsurer, is under common
8 control with the reinsurer, subject to the holding company act, chapter
9 48.-- RCW (sections 1 through 14 of this act), and whose compensation
10 is not based on the volume of premiums written;

11 (d) The manager of a group, association, pool, or organization of
12 insurers which engage in joint underwriting or joint reinsurance and
13 who are subject to examination by the insurance commissioner of the
14 state in which the manager's principal business office is located.

15 (8) "Reinsurer" means any person, firm, association, or corporation
16 duly licensed in this state pursuant to the applicable provisions of
17 this title as an insurer with the authority to assume reinsurance.

18 (9) "To be in violation" means that the reinsurance intermediary,
19 insurer, or reinsurer for whom the reinsurance intermediary was acting
20 failed to substantially comply with the provisions of this chapter.

21 (10) "Qualified United States financial institution" means an
22 institution that:

23 (a) Is organized or, in the case of a United States office of a
24 foreign banking organization, licensed, under the laws of the United
25 States or any state thereof;

26 (b) Is regulated, supervised, and examined by United States federal
27 or state authorities having regulatory authority over banks and trust
28 companies; and

29 (c) Has been determined by either the commissioner, or the
30 securities valuation office of the national association of insurance

1 commissioners, to meet such standards of financial condition and
2 standing as are considered necessary and appropriate to regulate the
3 quality of financial institutions whose letters of credit will be
4 acceptable to the commissioner.

5 NEW SECTION. **Sec. 23.** (1) No person, firm, association, or
6 corporation shall act as a reinsurance intermediary-broker in this
7 state if the person, firm, association, or corporation maintains an
8 office either directly or as a member or employee of a firm or
9 association, or an officer, director, or employee of a corporation:

10 (a) In this state, unless such person, firm, association, or
11 corporation is a licensed reinsurance intermediary-broker in this
12 state; or

13 (b) In another state, unless such person, firm, association, or
14 corporation is a licensed reinsurance intermediary-broker in this state
15 or another state having a law substantially similar to this chapter.

16 (2) No person, firm, association, or corporation shall act as a
17 reinsurance intermediary-manager:

18 (a) For a reinsurer domiciled in this state, unless such person,
19 firm, association, or corporation is a licensed reinsurance
20 intermediary-manager in this state;

21 (b) In this state, if the person, firm, association, or corporation
22 maintains an office either directly or as a member or employee of a
23 firm or association, or an officer, director, or employee of a
24 corporation in this state, unless such person, firm, association, or
25 corporation is a licensed reinsurance intermediary-manager in this
26 state;

27 (c) In another state for a nondomestic insurer, unless such person,
28 firm, association, or corporation is a licensed reinsurance

1 intermediary-manager in this state or another state having a law
2 substantially similar to this law.

3 (3) The commissioner may require a reinsurance intermediary-manager
4 subject to subsection (2) of this section to:

5 (a) File a bond in an amount from an insurer acceptable to the
6 commissioner for the protection of the reinsurer; and

7 (b) Maintain an errors and omissions policy in an amount acceptable
8 to the commissioner.

9 (4)(a) The commissioner may issue a reinsurance intermediary
10 license to any person, firm, association, or corporation who has
11 complied with the requirements of this chapter. Any such license
12 issued to a firm or association will authorize all the members of such
13 firm or association and any designated employees to act as reinsurance
14 intermediaries under the license, and all such persons shall be named
15 in the application and any supplements thereto. Any such license
16 issued to a corporation shall authorize all of the officers, and any
17 designated employees and directors thereof to act as reinsurance
18 intermediaries on behalf of such corporation, and all such persons
19 shall be named in the application and any supplements thereto.

20 (b) If the applicant for a reinsurance intermediary license is a
21 nonresident, such applicant, as a condition precedent to receiving or
22 holding a license, shall designate the commissioner as agent for
23 service of process in the manner, and with the same legal effect,
24 provided for by this chapter for designation of service of process upon
25 unauthorized insurers, and also shall furnish the commissioner with the
26 name and address of a resident of this state upon whom notices or
27 orders of the commissioner or process affecting such nonresident
28 reinsurance intermediary may be served. Such licensee shall promptly
29 notify the commissioner in writing of every change in its designated

1 agent for service of process, and such change shall not become
2 effective until acknowledged by the commissioner.

3 (5) The commissioner may refuse to issue a reinsurance intermediary
4 license if, in his or her judgment, the applicant, any one named on the
5 application, or any member, principal, officer, or director of the
6 applicant, is not trustworthy, or that any controlling person of such
7 applicant is not trustworthy to act as a reinsurance intermediary, or
8 that any of the foregoing has given cause for revocation or suspension
9 of such license, or has failed to comply with any prerequisite for the
10 issuance of such license. Upon written request therefor, the
11 commissioner will furnish a summary of the basis for refusal to issue
12 a license, which document shall be privileged and not subject to
13 chapter 42.17 RCW.

14 (6) Licensed attorneys at law of this state when acting in their
15 professional capacity as such shall be exempt from this section.

16 NEW SECTION. **Sec. 24.** Brokers transactions between a
17 reinsurance intermediary-broker and the insurer it represents in such
18 capacity shall only be entered into pursuant to a written
19 authorization, specifying the responsibilities of each party. The
20 authorization shall, at a minimum, provide that:

21 (1) The insurer may terminate the reinsurance intermediary-broker's
22 authority at any time.

23 (2) The reinsurance intermediary-broker will render accounts to the
24 insurer accurately detailing all material transactions, including
25 information necessary to support all commissions, charges, and other
26 fees received by, or owing, to the reinsurance intermediary-broker, and
27 remit all funds due to the insurer within thirty days of receipt.

28 (3) All funds collected for the insurer's account will be held by
29 the reinsurance intermediary-broker in a fiduciary capacity in a bank

1 which is a qualified United States financial institution as defined in
2 this chapter.

3 (4) The reinsurance intermediary-broker will comply with section 25
4 of this act.

5 (5) The reinsurance intermediary-broker will comply with the
6 written standards established by the insurer for the cession or
7 retrocession of all risks.

8 (6) The reinsurance intermediary-broker will disclose to the
9 insurer any relationship with any reinsurer to which business will be
10 ceded or retroceded.

11 NEW SECTION. **Sec. 25.** (1) For at least ten years after
12 expiration of each contract of reinsurance transacted by the
13 reinsurance intermediary-broker, the reinsurance intermediary-broker
14 will keep a complete record for each transaction showing:

15 (a) The type of contract, limits, underwriting restrictions,
16 classes, or risks and territory;

17 (b) Period of coverage, including effective and expiration dates,
18 cancellation provisions, and notice required of cancellation;

19 (c) Reporting and settlement requirements of balances;

20 (d) Rate used to compute the reinsurance premium;

21 (e) Names and addresses of assuming reinsurers;

22 (f) Rates of all reinsurance commissions, including the commissions
23 on any retrocessions handled by the reinsurance intermediary-broker;

24 (g) Related correspondence and memoranda;

25 (h) Proof of placement;

26 (i) Details regarding retrocessions handled by the reinsurance
27 intermediary-broker including the identity of retrocessionaires and
28 percentage of each contract assumed or ceded;

1 (j) Financial records, including but not limited to, premium and
2 loss accounts; and

3 (k) When the reinsurance intermediary-broker procures a reinsurance
4 contract on behalf of a licensed ceding insurer:

5 (i) Directly from any assuming reinsurer, written evidence that the
6 assuming reinsurer has agreed to assume the risk; or

7 (ii) If placed through a representative of the assuming reinsurer,
8 other than an employee, written evidence that such reinsurer has
9 delegated binding authority to the representative.

10 (2) The insurer will have access and the right to copy and audit
11 all accounts and records maintained by the reinsurance intermediary-
12 broker related to its business in a form usable by the insurer.

13 NEW SECTION. **Sec. 26.** (1) An insurer shall not engage the
14 services of any person, firm, association, or corporation to act as a
15 reinsurance intermediary-broker on its behalf unless such person is
16 licensed as required by section 23(1) of this act.

17 (2) An insurer may not employ an individual who is employed by a
18 reinsurance intermediary-broker with which it transacts business,
19 unless such reinsurance intermediary-broker is under common control
20 with the insurer and subject to the holding company act, chapter 48.--
21 RCW (sections 1 through 14 of this act).

22 (3) The insurer shall annually obtain a copy of statements of the
23 financial condition of each reinsurance intermediary-broker with which
24 it transacts business.

25 NEW SECTION. **Sec. 27.** Transactions between a reinsurance
26 intermediary-manager and the reinsurer it represents in such capacity
27 shall only be entered into pursuant to a written contract, specifying
28 the responsibilities of each party, which shall be approved by the

1 reinsurer's board of directors. At least thirty days before such
2 reinsurer assumes or cedes business through such reinsurance
3 intermediary-manager, a true copy of the approved contract shall be
4 filed with the commissioner for approval. The contract shall, at a
5 minimum, provide that:

6 (1) The reinsurer may terminate the contract for cause upon written
7 notice to the reinsurance intermediary-manager. The reinsurer may
8 immediately suspend the authority of the reinsurance intermediary-
9 manager to assume or cede business during the pendency of any dispute
10 regarding the cause for termination.

11 (2) The reinsurance intermediary-manager will render accounts to
12 the reinsurer accurately detailing all material transactions, including
13 information necessary to support all commissions, charges, and other
14 fees received by, or owing to, the reinsurance intermediary-manager,
15 and remit all funds due under the contract to the reinsurer on not less
16 than a monthly basis.

17 (3) All funds collected for the reinsurer's account will be held by
18 the reinsurance intermediary-manager in a fiduciary capacity in a bank
19 which is a qualified United States financial institution as defined in
20 this chapter. The reinsurance intermediary-manager may retain no more
21 than three months' estimated claims payments and allocated loss
22 adjustment expenses. The reinsurance intermediary-manager shall
23 maintain a separate bank account for each reinsurer that it represents.

24 (4) For at least ten years after expiration of each contract of
25 reinsurance transacted by the reinsurance intermediary-manager, the
26 reinsurance intermediary-manager will keep a complete record for each
27 transaction showing:

28 (a) The type of contract, limits, underwriting restrictions,
29 classes, or risks and territory;

1 (b) Period of coverage, including effective and expiration dates,
2 cancellation provisions, and notice required of cancellation, and
3 disposition of outstanding reserves on covered risks;

4 (c) Reporting and settlement requirements of balances;

5 (d) Rate used to compute the reinsurance premium;

6 (e) Names and addresses of reinsurers;

7 (f) Rates of all reinsurance commissions, including the commissions
8 on any retrocessions handled by the reinsurance intermediary-manager;

9 (g) Related correspondence and memoranda;

10 (h) Proof of placement;

11 (i) Details regarding retrocessions handled by the reinsurance
12 intermediary-manager, as permitted by section 29(4) of this act,
13 including the identity of retrocessionaires and percentage of each
14 contract assumed or ceded;

15 (j) Financial records, including but not limited to, premium and
16 loss accounts; and

17 (k) When the reinsurance intermediary-manager places a reinsurance
18 contract on behalf of a ceding insurer:

19 (i) Directly from any assuming reinsurer, written evidence that the
20 assuming reinsurer has agreed to assume the risk; or

21 (ii) If placed through a representative of the assuming reinsurer,
22 other than an employee, written evidence that such reinsurer has
23 delegated binding authority to the representative.

24 (5) The reinsurer will have access and the right to copy all
25 accounts and records maintained by the reinsurance intermediary-manager
26 related to its business in a form usable by the reinsurer.

27 (6) The contract cannot be assigned in whole or in part by the
28 reinsurance intermediary-manager.

1 (7) The reinsurance intermediary-manager will comply with the
2 written underwriting and rating standards established by the insurer
3 for the acceptance, rejection, or cession of all risks.

4 (8) Sets forth the rates, terms, and purposes of commissions,
5 charges, and other fees which the reinsurance intermediary-manager may
6 levy against the reinsurer.

7 (9) If the contract permits the reinsurance intermediary-manager to
8 settle claims on behalf of the reinsurer:

9 (a) All claims will be reported to the reinsurer in a timely
10 manner;

11 (b) A copy of the claim file will be sent to the reinsurer at its
12 request or as soon as it becomes known that the claim:

13 (i) Has the potential to exceed the lesser of an amount determined
14 by the commissioner or the limit set by the reinsurer;

15 (ii) Involves a coverage dispute;

16 (iii) May exceed the reinsurance intermediary-manager's claims
17 settlement authority;

18 (iv) Is open for more than six months; or

19 (v) Is closed by payment of the lesser of an amount set by the
20 commissioner or an amount set by the reinsurer;

21 (c) All claim files will be the joint property of the reinsurer and
22 reinsurance intermediary-manager. However, upon an order of
23 liquidation of the reinsurer such files shall become the sole property
24 of the reinsurer or its estate; the reinsurance intermediary-manager
25 shall have reasonable access to and the right to copy the files on a
26 timely basis;

27 (d) Any settlement authority granted to the reinsurance
28 intermediary-manager may be terminated for cause upon the reinsurer's
29 written notice to the reinsurance intermediary-manager or upon the
30 termination of the contract. The reinsurer may suspend the settlement

1 authority during the pendency of the dispute regarding the cause of
2 termination.

3 (10) If the contract provides for a sharing of interim profits by
4 the reinsurance intermediary-manager, that such interim profits will
5 not be paid until one year after the end of each underwriting period
6 for property business and five years after the end of each underwriting
7 period for casualty business, or a later period set by the commissioner
8 for specified lines of insurance, and not until the adequacy of
9 reserves on remaining claims has been verified pursuant to section
10 29(3) of this act.

11 (11) The reinsurance intermediary-manager will annually provide the
12 reinsurer with a statement of its financial condition prepared by an
13 independent certified accountant.

14 (12) The reinsurer shall periodically, at least semiannually,
15 conduct an on-site review of the underwriting and claims processing
16 operations of the reinsurance intermediary-manager.

17 (13) The reinsurance intermediary-manager will disclose to the
18 reinsurer any relationship it has with any insurer prior to ceding or
19 assuming any business with such insurer pursuant to this contract.

20 (14) Within the scope of its actual or apparent authority the acts
21 of the reinsurance intermediary-manager shall be deemed to be the acts
22 of the reinsurer on whose behalf it is acting.

23 NEW SECTION. **Sec. 28.** The reinsurance intermediary-manager
24 shall not:

25 (1) Cede retrocessions on behalf of the reinsurer, except that the
26 reinsurance intermediary-manager may cede facultative retrocessions
27 pursuant to obligatory facultative agreements if the contract with the
28 reinsurer contains reinsurance underwriting guidelines for such
29 retrocessions. Such guidelines shall include a list of reinsurers with

1 which such automatic agreements are in effect, and for each such
2 reinsurer, the coverages and amounts or percentages that may be
3 reinsured, and commission schedules.

4 (2) Commit the reinsurer to participate in reinsurance syndicates.

5 (3) Appoint any reinsurance intermediary without assuring that the
6 reinsurance intermediary is lawfully licensed to transact the type of
7 reinsurance for which he or she is appointed.

8 (4) Without prior approval of the reinsurer, pay or commit the
9 reinsurer to pay a claim, net of retrocessions, that exceeds the lesser
10 of an amount specified by the reinsurer or one percent of the
11 reinsurer's policyholder's surplus as of December 31 of the last
12 complete calendar year.

13 (5) Collect any payment from a retrocessionaire or commit the
14 reinsurer to any claim settlement with a retrocessionaire, without
15 prior approval of the reinsurer. If prior approval is given, a report
16 must be promptly forwarded to the reinsurer.

17 (6) Jointly employ an individual who is employed by the reinsurer
18 unless such reinsurance intermediary-manager is under common control
19 with the reinsurer subject to the holding company act, chapter 48.--
20 RCW (sections 1 through 14 of this act).

21 (7) Appoint a subreinsurance intermediary-manager.

22 NEW SECTION. **Sec. 29.** (1) A reinsurer shall not engage the
23 services of any person, firm, association, or corporation to act as a
24 reinsurance intermediary-manager on its behalf unless such person is
25 licensed as required by section 23(2) of this act.

26 (2) The reinsurer shall annually obtain a copy of statements of the
27 financial condition of each reinsurance intermediary-manager which such
28 reinsurer has engaged prepared by an independent certified accountant
29 in a form acceptable to the commissioner.

1 (3) If a reinsurance intermediary-manager establishes loss
2 reserves, the reinsurer shall annually obtain the opinion of an actuary
3 attesting to the adequacy of loss reserves established for losses
4 incurred and outstanding on business produced by the reinsurance
5 intermediary-manager. This opinion shall be in addition to any other
6 required loss reserve certification.

7 (4) Binding authority for all retrocessional contracts or
8 participation in reinsurance syndicates shall rest with an officer of
9 the reinsurer who shall not be affiliated with the reinsurance
10 intermediary-manager.

11 (5) Within thirty days of termination of a contract with a
12 reinsurance intermediary-manager, the reinsurer shall provide written
13 notification of such termination to the commissioner.

14 (6) A reinsurer shall not appoint to its board of directors, any
15 officer, director, employee, controlling shareholder, or subproducer of
16 its reinsurance intermediary-manager. This subsection shall not apply
17 to relationships governed by the holding company act, chapter 48.-- RCW
18 (sections 1 through 14 of this act), or, if applicable, the broker
19 controlled property and casualty insurer act, chapter 48.-- RCW
20 (sections 15 through 20 of this act).

21 NEW SECTION. **Sec. 30.** (1) A reinsurance intermediary shall be
22 subject to examination by the commissioner. The commissioner shall
23 have access to all books, bank accounts, and records of the reinsurance
24 intermediary in a form usable to the commissioner.

25 (2) A reinsurance intermediary-manager may be examined as if it
26 were the reinsurer.

27 NEW SECTION. **Sec. 31.** (1) A reinsurance intermediary, insurer,
28 or reinsurer found by the commissioner, after a hearing conducted in

1 accordance with chapters 48.17 and 34.05 RCW, to be in violation of any
2 provision of this chapter, shall:

3 (a) For each separate violation, pay a penalty in an amount not
4 exceeding five thousand dollars;

5 (b) Be subject to revocation or suspension of its license; and

6 (c) If a violation was committed by the reinsurance intermediary,
7 such reinsurance intermediary shall make restitution to the insurer,
8 reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for
9 the net losses incurred by the insurer or reinsurer attributable to
10 such violation.

11 (2) The decision, determination, or order of the commissioner
12 pursuant to subsection (1) of this section shall be subject to judicial
13 review pursuant to this title and chapter 34.05 RCW.

14 (3) Nothing contained in this section shall affect the right of the
15 commissioner to impose any other penalties provided in this title.

16 (4) Nothing contained in this chapter is intended to or shall in
17 any manner limit or restrict the rights of policyholders, claimants,
18 creditors, or other third parties or confer any rights to such persons.

19 NEW SECTION. **Sec. 32.** The commissioner may adopt reasonable
20 rules for the implementation and administration of the provisions of
21 this chapter.

22 NEW SECTION. **Sec. 33.** This chapter may be known and cited as
23 the managing general agents act.

24 NEW SECTION. **Sec. 34.** Unless the context clearly requires
25 otherwise, the definitions in this section apply throughout this
26 chapter:

1 (1) "Actuary" means a person who is a member in good standing of
2 the American academy of actuaries.

3 (2) "Insurer" means any person having a certificate of authority in
4 this state as an insurance company pursuant to RCW 48.01.050.

5 (3) "Managing general agent" means:

6 (a) A person who manages all or part of the insurance business of
7 an insurer, including the management of a separate division,
8 department, or underwriting office, and acts as a representative of
9 such insurer whether known as a managing general agent, manager, or
10 other similar term, and who, with or without the authority, either
11 separately or together with affiliates, produces, directly or
12 indirectly, and underwrites an amount of gross direct written premium
13 equal to or more than five percent of the policyholder surplus as
14 reported in the last annual statement of the insurer in any one quarter
15 or year together with one or more of the following activities related
16 to the business produced:

17 (i) Adjusts or pays claims in excess of an amount to be determined
18 by the commissioner; or

19 (ii) Negotiates reinsurance on behalf of the insurer.

20 (b) Notwithstanding (a) of this subsection, the following persons
21 shall not be managing general agents for purposes of this chapter:

22 (i) An employee of the insurer;

23 (ii) A United States manager of the United States branch of an
24 alien insurer;

25 (iii) An underwriting manager who, pursuant to contract, manages
26 all of the insurance operations of the insurer, is under common control
27 with the insurer, subject to chapter 48.31A RCW, and whose compensation
28 is not based on the volume of premiums written; or

1 (iv) The attorney-in-fact authorized by and acting for the
2 subscribers of a reciprocal insurer or interinsurance exchange under
3 powers of attorney.

4 (4) "Underwrite" means the authority to accept or reject risk on
5 behalf of the insurer.

6 NEW SECTION. **Sec. 35.** (1) No person may act in the capacity of
7 a managing general agent with respect to risks located in this state,
8 for an insurer authorized by this state, unless that person is licensed
9 in this state as an agent, under chapter 48.17 RCW, for the lines of
10 insurance involved and is designated as a managing general agent and
11 appointed as such by the insurer.

12 (2) No person may act in the capacity of a managing general agent
13 representing an insurer domiciled in this state with respect to risks
14 located outside this state unless that person is licensed as an agent
15 in this state, under chapter 48.17 RCW, for the lines of insurance
16 involved and is designated as a managing general agent and appointed as
17 such by the insurer.

18 (3) The commissioner may require a bond for the protection of each
19 insurer.

20 (4) The commissioner may require the managing general agent to
21 maintain an errors and omissions policy.

22 NEW SECTION. **Sec. 36.** No managing general agent may place
23 business with an insurer unless there is in force a written contract
24 between the managing general agent and the insurer that sets forth the
25 responsibilities of each party and, where both parties share
26 responsibility for a particular function, specifies the division of
27 such responsibilities, and that contains the following minimum
28 provisions:

1 (1) The insurer may terminate the contract for cause upon written
2 notice to the managing general agent. The insurer may suspend the
3 underwriting authority of the managing general agent during the
4 pendency of any dispute regarding the cause for termination.

5 (2) The managing general agent shall render accounts to the insurer
6 detailing all transactions and remit all funds due under the contract
7 to the insurer on not less than a monthly basis.

8 (3) All funds collected for the account of an insurer shall be held
9 by the managing general agent in a fiduciary capacity in a financial
10 institution located in this state which is a member of the federal
11 reserve system. This account shall be used for all payments on behalf
12 of the insurer. The managing general agent may retain no more than
13 three months estimated claims payments and allocated loss adjustment
14 expenses.

15 (4) Separate records of business written by the managing general
16 agent shall be maintained. The insurer shall have access to and the
17 right to copy all accounts and records related to its business in a
18 form usable by the insurer and the commissioner shall have access to
19 all books, bank accounts, and records of the managing general agent in
20 a form usable to the commissioner. Those records shall be retained
21 according to the requirements of this title and regulations thereunder.

22 (5) The contract may not be assigned in whole or part by the
23 managing general agent.

24 (6)(a) Appropriate underwriting guidelines shall include at least
25 the following: The maximum annual premium volume; the basis of the
26 rates to be charged; the types of risks that may be written; maximum
27 limits of liability; applicable exclusions; territorial limitations;
28 policy cancellation provisions; and the maximum policy period.

1 (b) The insurer shall have the right to cancel or not renew any
2 policy of insurance subject to the applicable laws and regulations,
3 including those in chapter 48.18 RCW.

4 (7) If the contract permits the managing general agent to settle
5 claims on behalf of the insurer:

6 (a) All claims shall be reported to the insurer in a timely manner.

7 (b) A copy of the claim file shall be sent to the insurer at its
8 request or as soon as it becomes known that the claim:

9 (i) Has the potential to exceed an amount determined by the
10 commissioner, or exceeds the limit set by the insurer, whichever is
11 less;

12 (ii) Involves a coverage dispute;

13 (iii) May exceed the managing general agent's claims settlement
14 authority;

15 (iv) Is open for more than six months; or

16 (v) Is closed by payment in excess of an amount set by the
17 commissioner or an amount set by the insurer, whichever is less.

18 (c) All claim files shall be the joint property of the insurer and
19 the managing general agent. However, upon an order of liquidation of
20 the insurer, those files shall become the sole property of the insurer
21 or its liquidator or successor. The managing general agent shall have
22 reasonable access to and the right to copy the files on a timely basis.

23 (d) Any settlement authority granted to the managing general agent
24 may be terminated for cause upon the insurer's written notice to the
25 managing general agent or upon the termination of the contract. The
26 insurer may suspend the managing general agent's settlement authority
27 during the pendency of any dispute regarding the cause for termination.

28 (8) Where electronic claims files are in existence, the contract
29 must address the timely transmission of the data.

1 (9) If the contract provides for a sharing of interim profits by
2 the managing general agent, and the managing general agent has the
3 authority to determine the amount of the interim profits by
4 establishing loss reserves or controlling claim payments or in any
5 other manner, interim profits shall not be paid to the managing general
6 agent until one year after they are earned for property insurance
7 business and five years after they are earned on casualty business and
8 not until the profits have been verified under section 37 of this act.

9 (10) The managing general agent may not:

10 (a) Bind reinsurance or retrocessions on behalf of the insurer,
11 except that the managing general agent may bind facultative reinsurance
12 contracts pursuant to obligatory facultative agreements if the contract
13 with the insurer contains reinsurance underwriting guidelines
14 including, for both reinsurance assumed and ceded, a list of reinsurers
15 with which such automatic agreements are in effect, the coverages and
16 amounts or percentages that may be reinsured, and commission schedules;

17 (b) Commit the insurer to participate in insurance or reinsurance
18 syndicates;

19 (c) Use any agent that is not appointed to represent the insurer in
20 accordance with the requirements of chapter 48.17 RCW;

21 (d) Without prior approval of the insurer, pay or commit the
22 insurer to pay a claim over a specified amount, net of reinsurance,
23 that shall not exceed one percent of the insurer's policyholder surplus
24 as of December 31 of the last-completed calendar year;

25 (e) Collect any payment from a reinsurer or commit the insurer to
26 any claim settlement with a reinsurer, without prior approval of the
27 insurer. If prior approval is given, a report shall be promptly
28 forwarded to the insurer;

29 (f) Permit any agent appointed by it to serve on the insurer's
30 board of directors;

- 1 (g) Jointly employ an individual who is employed by the insurer; or
2 (h) Appoint a submanaging general agent.

3 NEW SECTION. **Sec. 37.** (1) The insurer shall have on file an
4 independent audited financial statement, in a form acceptable to the
5 commissioner, of each managing general agent with which it is doing or
6 has done business.

7 (2) If a managing general agent establishes loss reserves, the
8 insurer shall annually obtain the opinion of an actuary attesting to
9 the adequacy of loss reserves established for losses incurred and
10 outstanding on business produced by the managing general agent. This
11 is in addition to any other required loss reserve certification.

12 (3) The insurer shall periodically, and no less frequently than
13 semiannually, conduct an on-site review of the underwriting and claims
14 processing operations of the managing general agent.

15 (4) Binding authority for all reinsurance contracts or
16 participation in insurance or reinsurance syndicates shall rest with an
17 officer of the insurer, who shall not be affiliated with the managing
18 general agent.

19 (5) Within thirty days of entering into or terminating a contract
20 with a managing general agent, the insurer shall provide written
21 notification of that appointment or termination to the commissioner.
22 Notices of appointment of a managing general agent shall include a
23 statement of duties which the managing general agent is expected to
24 perform on behalf of the insurer, the lines of insurance for which the
25 managing general agent is to be authorized to act, and any other
26 information the commissioner may request.

27 (6) An insurer shall review its books and records each calendar
28 quarter to determine if any agent has become, by operation of section
29 34(3) of this act, a managing general agent as defined in section 34 of

1 this act. If the insurer determines that an agent has become a
2 managing general agent under section 34 of this act, the insurer shall
3 promptly notify the agent and the commissioner of that determination
4 and the insurer and agent shall fully comply with the provisions of
5 this chapter within thirty days.

6 (7) An insurer may not appoint to its board of directors an
7 officer, director, employee, subagent, or controlling shareholder of
8 its managing general agents. This subsection shall not apply to
9 relationships governed by chapter 48.31A RCW, or, if applicable, the
10 business transacted with broker controlled property and casualty
11 insurer act, chapter 48.-- RCW (sections 15 through 20 of this act).

12 NEW SECTION. **Sec. 38.** The acts of the managing general agent
13 are considered to be the acts of the insurer on whose behalf it is
14 acting. A managing general agent may be examined as if it were the
15 insurer, as provided in chapter 48.03 RCW.

16 NEW SECTION. **Sec. 39.** (1) Subject to a hearing in accordance
17 with chapters 34.05 and 48.04 RCW, upon a finding by the commissioner
18 that any person has violated any provision of this chapter, the
19 commissioner may order:

20 (a) For each separate violation, a penalty in an amount of not more
21 than one thousand dollars;

22 (b) Revocation, or suspension for up to one year, of the agent's
23 license; and

24 (c) The managing general agent to reimburse the insurer, the
25 rehabilitator, or liquidator of the insurer for any losses incurred by
26 the insurer caused by a violation of this chapter committed by the
27 managing general agent.

1 (2) The decision, determination, or order of the commissioner under
2 this section shall be subject to judicial review under chapters 34.05
3 and 48.04 RCW.

4 (3) Nothing contained in this section affects the right of the
5 commissioner to impose any other penalties provided for in this title.

6 (4) Nothing contained in this chapter is intended to or in any
7 manner limits or restricts the rights of policyholders, claimants, and
8 auditors.

9 NEW SECTION. **Sec. 40.** The commissioner may adopt rules for the
10 implementation and administration of the provisions of this chapter,
11 that shall include but are not limited to licensure of managing general
12 agents.

13 NEW SECTION. **Sec. 41.** No insurer may continue to utilize the
14 services of a managing general agent on and after January 1, 1993,
15 unless that utilization is in compliance with this chapter.

16 **Sec. 42.** RCW 48.03.010 and 1982 c 181 s 1 are each amended to read
17 as follows:

18 (1) The commissioner shall examine the affairs, transactions,
19 accounts, records, documents, and assets of each authorized insurer as
20 often as he or she deems advisable. ((He)) The commissioner shall so
21 examine each ((domestic)) licensed insurer not less frequently than
22 every five years. Examination of an alien insurer may be limited to
23 its insurance transactions in the United States. In scheduling and
24 determining the nature, scope, and frequency of an examination, the
25 commissioner shall consider such matters as the results of financial
26 statement analyses and ratios, changes in management or ownership,
27 actuarial opinions, reports of independent certified public

1 accountants, and other criteria as set forth in the examiner's handbook
2 adopted by the national association of insurance commissioners and in
3 effect when the commissioner exercises discretion under this section.

4 (2) As often as ((he)) the commissioner deems advisable and at
5 least once in five years, the commissioner shall fully examine each
6 rating organization and examining bureau licensed in this state. As
7 often as he or she deems it advisable ((he)) the commissioner may
8 examine each advisory organization and each joint underwriting or joint
9 reinsurance group, association, or organization.

10 (3) The commissioner shall in like manner examine each insurer or
11 rating organization applying for authority to do business in this
12 state.

13 (4) ~~((In lieu of making his own examination, the commissioner may~~
14 ~~accept a full report of the last recent examination of a nondomestic~~
15 ~~insurer or rating or advisory organization, or joint underwriting or~~
16 ~~joint reinsurance group, association or organization, certified to by~~
17 ~~the insurance supervisory official of the state of domicile or of~~
18 ~~entry)) In lieu of an examination under this chapter of a foreign or
19 alien insurer licensed in this state, the commissioner may accept an
20 examination report on the company as prepared by the insurance
21 department for the company's state of domicile or port of entry state
22 until January 1, 1994. Thereafter, an examination report may be
23 accepted only if: (a) That insurance department was at the time of the
24 examination accredited under the national association of insurance
25 commissioners' financial regulation standards and accreditation
26 program; or (b) the examination was performed either under the
27 supervision of an accredited insurance department or with the
28 participation of one or more examiners employed by an accredited state
29 insurance department who, after a review of the examination work papers
30 and report, state under oath that the examination was performed in a~~

1 manner consistent with the standards and procedures required by their
2 insurance department.

3 (5) ~~The commissioner may elect to accept and rely on an audit~~
4 ~~report made by an independent certified public accountant for the~~
5 ~~insurer in the course of that part of the commissioner's examination~~
6 ~~covering the same general subject matter as the audit. The~~
7 ~~commissioner may incorporate the audit report in his or her report of~~
8 ~~the examination.~~

9 (6) For the purposes of completing an examination of any company
10 under this chapter, the commissioner may examine or investigate any
11 managing general agent or any other person, or the business of any
12 managing general agent or other person, insofar as that examination or
13 investigation is, in the sole discretion of the commissioner, necessary
14 or material to the examination of the company.

15 NEW SECTION. Sec. 43. A new section is added to chapter 48.03 RCW
16 to read as follows:

17 Upon determining that an examination should be conducted, the
18 commissioner or the commissioner's designee shall appoint one or more
19 examiners to perform the examination and instruct them as to the scope
20 of the examination. In conducting the examination, the examiner shall
21 observe those guidelines and procedures set forth in the examiners'
22 handbook adopted by the national association of insurance
23 commissioners. The commissioner may also employ such other guidelines
24 or procedures as the commissioner may deem appropriate.

25 Sec. 44. RCW 48.03.040 and 1965 ex.s. c 70 s 1 are each amended to
26 read as follows:

27 (1) No later than sixty days following completion of each
28 examination, the commissioner shall make a full written report of each

1 examination made by him or her containing only facts ascertained from
2 the accounts, records, and documents examined and from the sworn
3 testimony of individuals, and such conclusions and recommendations as
4 may reasonably be warranted from such facts.

5 (2) The report shall be certified by the commissioner or by his or
6 her examiner in charge of the examination, and shall be filed in the
7 commissioner's office subject to subsection (3) of this section.

8 (3) The commissioner shall furnish a copy of the examination report
9 to the person examined not less than ten days and, unless the time is
10 extended by the commissioner, not more than thirty days prior to the
11 filing of the report for public inspection in the commissioner's
12 office. If such person so requests in writing within such ((ten-day))
13 period, the commissioner shall hold a hearing to consider objections of
14 such person to the report as proposed, and shall not so file the report
15 until after such hearing and until after any modifications in the
16 report deemed necessary by the commissioner have been made.

17 (4) Within thirty days of the end of the period described in
18 subsection (3) of this section unless extended by order of the
19 commissioner, the commissioner shall consider the report, together with
20 any written submissions or rebuttals and any relevant portions of the
21 examiner's workpapers and enter an order:

22 (a) Adopting the examination report as filed or with modification
23 or corrections. If the examination report reveals that the company is
24 operating in violation of any law, regulation, or order of the
25 commissioner, the commissioner may order the company to take any action
26 the commissioner considers necessary and appropriate to cure that
27 violation;

28 (b) Rejecting the examination report with directions to the
29 examiners to reopen the examination for purposes of obtaining

1 additional data, documentation, or information, and refiling under this
2 section; or

3 (c) Calling for an investigatory hearing with no less than twenty
4 days' notice to the company for purposes of obtaining additional
5 documentation, data, information, and testimony.

6 (5) All orders entered under subsection (4) of this section shall
7 be accompanied by findings and conclusions resulting from the
8 commissioner's consideration and review of the examination report,
9 relevant examiner workpapers, and any written submissions or rebuttals.
10 Such an order shall be considered a final administrative decision and
11 may be appealed under the administrative procedure act, chapter 34.05
12 RCW, and shall be served upon the company by certified mail, together
13 with a copy of the adopted examination report. A copy of the adopted
14 examination report shall be sent by certified mail to each director at
15 the director's resident address.

16 (6)(a) Upon the adoption of the examination report under subsection
17 (4) of this section, the commissioner shall continue to hold the
18 content of the examination report as private and confidential
19 information for a period of five days except that the order may be
20 disclosed to the person examined. Thereafter, the commissioner may
21 open the report for public inspection so long as no court of competent
22 jurisdiction has stayed its publication.

23 (b) Nothing in this title prohibits the commissioner from
24 disclosing the content of an examination report, preliminary
25 examination report or results, or any matter relating thereto, to the
26 insurance department of any other state or country, or to law
27 enforcement officials of this or any other state or agency of the
28 federal government at any time, so long as the agency or office
29 receiving the report or matters relating thereto agrees in writing to
30 hold it confidential and in a manner consistent with this chapter.

1 ~~(c) In the event the commissioner determines that regulatory action~~
2 ~~is appropriate as a result of any examination, he or she may initiate~~
3 ~~any proceedings or actions as provided by law.~~

4 ~~(d) Nothing contained in this section requires the commissioner to~~
5 ~~disclose any information or records which would indicate or show the~~
6 ~~existence or content of any investigation or activity of a criminal~~
7 ~~justice agency.~~

8 **Sec. 45.** ~~RCW 48.03.050 and 1947 c 79 s .03.05 are each amended to~~
9 ~~read as follows:~~

10 ~~The commissioner may withhold from public inspection any~~
11 ~~examination or investigation report for so long as he or she deems it~~
12 ~~advisable, subject to the provisions in RCW 48.32.080.~~

13 **Sec. 46.** ~~RCW 48.03.060 and 1981 c 339 s 2 are each amended to read~~
14 ~~as follows:~~

15 ~~(1) Examinations within this state of any insurer domiciled or~~
16 ~~having its home offices in this state, other than a title insurer, made~~
17 ~~by the commissioner or his or her examiners and employees shall, except~~
18 ~~as to fees, mileage, and expense incurred as to witnesses, be at the~~
19 ~~expense of the state.~~

20 ~~(2) Every other examination, whatsoever, or any part of the~~
21 ~~examination of any person domiciled or having its home offices in this~~
22 ~~state requiring travel and services outside this state, shall be made~~
23 ~~by the commissioner or by examiners designated by ((him)) the~~
24 ~~commissioner and shall be at the expense of the person examined; but a~~
25 ~~domestic insurer shall not be liable for the compensation of examiners~~
26 ~~employed by the commissioner for such services outside this state.~~

27 ~~(3) When making an examination under this chapter, the commissioner~~
28 ~~may retain attorneys, appraisers, independent actuaries, independent~~

1 certified public accountants, or other professionals and specialists as
2 examiners, the cost of which shall be borne by the person that is the
3 subject of the examination, except as provided in subsection (1) of
4 this section.

5 (4) The person examined and liable therefor shall reimburse the
6 state upon presentation of an itemized statement thereof, for the
7 actual travel expenses of the commissioner's examiners, their
8 reasonable living expense allowance, and their per diem compensation,
9 including salary and the employer's cost of employee benefits, at a
10 reasonable rate approved by the commissioner, incurred on account of
11 the examination. Per diem salary and expenses for employees examining
12 insurers domiciled outside the state of Washington shall be established
13 by the commissioner on the basis of the National Association of
14 Insurance Commissioner's recommended salary and expense schedule for
15 zone examiners, or the salary schedule established by the state
16 personnel board and the expense schedule established by the office of
17 financial management, whichever is higher. Domestic title insurer
18 shall pay the examination expense and costs to the commissioner as
19 itemized and billed by him or her.

20 The commissioner or his or her examiners shall not receive or
21 accept any additional emolument on account of any examination.

22 (5) Nothing contained in this chapter limits the commissioner's
23 authority to terminate or suspend any examination in order to pursue
24 other legal or regulatory action pursuant to the insurance laws of this
25 state. Findings of fact and conclusions made pursuant to any
26 examination shall be prima facie evidence in any legal or regulatory
27 action.

28 NEW SECTION. Sec. 47. A new section is added to chapter 48.03 RCW
29 to read as follows:

1 (1) No examiner may be appointed by the commissioner if the
2 examiner, either directly or indirectly, has a conflict of interest or
3 is affiliated with the management of or owns a pecuniary interest in
4 any person subject to examination under this chapter. This section
5 does not automatically preclude an examiner from being:

6 (a) A policyholder or claimant under an insurance policy;

7 (b) A grantor of a mortgage or similar instrument on the examiner's
8 residence to a regulated entity if done under customary terms and in
9 the ordinary course of business;

10 (c) An investment owner in shares of regulated diversified
11 investment companies; or

12 (d) A settlor or beneficiary of a blind trust into which any
13 otherwise impermissible holdings have been placed.

14 (2) Notwithstanding the requirements of subsection (1) of this
15 section, the commissioner may retain from time to time, on an
16 individual basis, qualified actuaries, certified public accountants, or
17 other similar individuals who are independently practicing their
18 professions, even though those persons may from time to time be
19 similarly employed or retained by persons subject to examination under
20 this chapter.

21 NEW SECTION. **Sec. 48.** A new section is added to chapter 48.03 RCW
22 to read as follows:

23 (1) No cause of action may arise nor may any liability be imposed
24 against the commissioner, the commissioner's authorized
25 representatives, or any examiner appointed by the commissioner for any
26 statements made or conduct performed in good faith while carrying out
27 the provisions of this chapter.

28 (2) No cause of action may arise nor may any liability be imposed
29 against any person for the act of communicating or delivering

1 information or data to the commissioner or the commissioner's
2 authorized representative or examiner pursuant to an examination made
3 under this chapter, if that act of communication or delivery was
4 performed in good faith and without fraudulent intent or the intent to
5 deceive.

6 (3) This section does not modify any privilege or immunity
7 previously enjoyed by a person identified in subsection (1) of this
8 section.

9 (4) A person identified in subsection (1) of this section is
10 entitled to an award of attorneys' fees and costs if he or she is the
11 prevailing party in a civil cause of action for libel, slander, or any
12 other tort arising out of activities in carrying out the provisions of
13 this chapter and the party bringing the action was not substantially
14 justified in doing so. For purposes of this section a proceeding is
15 "substantially justified" if it had a reasonable basis in law or fact
16 at the time that it was initiated.

17 (5) If any claim is made or threatened of the sort described in
18 subsection (1) of this section, the commissioner shall provide or pay
19 for the defense of himself or herself, the examiner or representative,
20 and shall pay any judgment or settlement, until it is determined that
21 the person did not act in good faith or did act with fraudulent intent
22 or the intent to deceive.

23 (6) The immunity, indemnification, and other protections under this
24 section are in addition to that now or hereafter existing under other
25 law.

26 **Sec. 49.** RCW 48.05.340 and 1991 sp.s. c 5 s 1 are each amended to
27 read as follows:

28 (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority
29 to transact any one kind of insurance as defined in chapter 48.11 RCW

1 or combination of kinds of insurance as shown below, a foreign or alien
 2 insurer, whether stock or mutual, or a domestic insurer hereafter
 3 formed shall possess and thereafter maintain unimpaired paid-in capital
 4 stock, if a stock insurer, or unimpaired surplus if a mutual insurer,
 5 and shall possess when first so authorized additional funds in surplus
 6 as follows:

7	Paid-in capital		
8	Kind or kinds	stock or	Additional
9	of insurance	basic surplus	surplus
10	Life	\$ 2,000,000	2,000,000
11	Disability	2,000,000	2,000,000
12	Life and disability	2,400,000	2,400,000
13	Property	2,000,000	2,000,000
14	Marine & transportation	2,000,000	2,000,000
15	General casualty	2,400,000	2,400,000
16	Vehicle	2,000,000	2,000,000
17	Surety	2,000,000	2,000,000
18	Any two of the following kinds of		
19	insurance: Property, marine &		
20	transportation, general		
21	casualty, vehicle, surety,		
22	disability	3,000,000	3,000,000
23	Multiple lines (all insurances		
24	except life and title		
25	insurance)	3,000,000	3,000,000
26	Title (in accordance with the		
27	provisions of chapter 48.29		
28	RCW)		

29 (2) Capital and surplus requirements are based upon all the kinds
 30 of insurance transacted by the insurer wherever it may operate or

1 propose to operate, whether or not only a portion of such kinds are to
2 be transacted in this state.

3 (3) An insurer holding a certificate of authority to transact
4 insurance in this state immediately prior to July 1, 1991, may continue
5 to be authorized to transact the same kinds of insurance as long as it
6 is otherwise qualified for such authority and thereafter maintains
7 unimpaired the amount of paid-in capital stock, if a stock insurer, or
8 basic surplus, if a mutual or reciprocal insurer, and special surplus
9 as required of it under laws in force immediately prior to such
10 effective date; and any proposed domestic insurer which is in process
11 of formation or financing under a solicitation permit which is
12 outstanding immediately prior to July 1, 1991, shall, if otherwise
13 qualified therefor, be authorized to transact any kind or kinds of
14 insurance upon the basis of the capital and surplus requirements of
15 such an insurer under the laws in force immediately prior to such
16 effective date. The requirements for paid-in capital stock, basic
17 surplus, and special surplus that were in effect immediately before
18 July 1, 1991, apply to any completed application for a certificate of
19 authority from a foreign or alien insurer that is on file with the
20 commissioner on July 1, 1991.

21 (4) The commissioner may, by rule, require insurers to maintain
22 additional capital and surplus based upon the type, volume, and nature
23 of insurance business transacted consistent with the methods then
24 adopted by the national association of insurance commissioners for
25 determining the appropriate amount of additional capital and surplus to
26 be required. In the absence of an applicable rule, the commissioner
27 may, after a hearing or with the consent of the insurer, require an
28 insurer to have and maintain a larger amount of capital or surplus than
29 prescribed under this section or the rules pursuant to this section,
30 based upon the volume and kinds of insurance transacted by the insurer

1 and on the principles of risk-based capital as determined by the
2 national association of insurance commissioners.

3 **Sec. 50.** RCW 48.11.140 and 1983 c 3 s 149 are each amended to read
4 as follows:

5 (1) No insurer shall retain any (~~fire or surety~~) risk on any one
6 subject of insurance, whether located or to be performed in this state
7 or elsewhere, in an amount exceeding ten percent of its surplus to
8 policyholders(~~, except that:~~

9 ~~(a) Domestic mutual insurers may insure up to the applicable limits~~
10 ~~provided by RCW 48.05.340, if greater.~~

11 ~~(b) In the case of fire risks adequately protected by automatic~~
12 ~~sprinklers or fire risks principally of noncombustible construction and~~
13 ~~occupancy, an insurer may retain fire risks as to any one subject in an~~
14 ~~amount not exceeding twenty five percent of the sum of (i) its unearned~~
15 ~~premium reserve and (ii) its surplus to policyholders)).~~

16 (2) For the purposes of this section, a "subject of insurance" as
17 to insurance against fire includes all properties insured by the same
18 insurer which are reasonably subject to loss or damage from the same
19 fire.

20 (3) Reinsurance in an alien reinsurer not qualified under RCW
21 48.05.300 may not be deducted in determining risk retained for the
22 purposes of this section.

23 (4) In the case of surety insurance, the net retention shall be
24 computed after deduction of reinsurances, the amount assumed by any
25 co-surety, the value of any security deposited, pledged, or held
26 subject to the consent of the surety and for the protection of the
27 surety.

1 (5) This section (~~shall~~) does not apply to life insurance,
2 disability insurance, title insurance, or insurance of marine risks or
3 marine protection and indemnity risks.

4 **Sec. 51.** RCW 48.12.180 and 1973 c 151 s 1 are each amended to read
5 as follows:

6 (1) Securities, other than those referred to in RCW 48.12.170, held
7 by an insurer shall be valued, in the discretion of the commissioner,
8 at their market value, or at their appraised value, or at prices
9 determined by him or her as representing their fair market value(~~(, all~~
10 ~~consistent with any current method for the valuation of any such~~
11 ~~security formulated or approved by the National Association of~~
12 ~~Insurance Commissioners))~~).

13 (2) Preferred or guaranteed stocks or shares while paying full
14 dividends may be carried at a fixed value in lieu of market value, at
15 the discretion of the commissioner and in accordance with such method
16 of computation as he or she may approve.

17 (3) The stock of a subsidiary of an insurer shall be valued on the
18 basis of the greater of (a) the value of only such of the assets of
19 such subsidiary as would constitute lawful investments for the insurer
20 if acquired or held directly by the insurer or (b) such other value
21 determined pursuant to rules and cumulative limitations which shall be
22 promulgated by the commissioner to effectuate the purposes of this
23 chapter.

24 (4) The commissioner has full discretion in determining the method
25 of calculating values according to the rules set forth in this section,
26 and consistent with such methods as then adopted by the national
27 association of insurance commissioners.

1 **Sec. 52.** RCW 48.12.190 and 1967 ex.s. c 95 s 10 are each amended
2 to read as follows:

3 (1) Real property acquired pursuant to a mortgage loan or a
4 contract for a deed, in the absence of a recent appraisal deemed by the
5 commissioner to be reliable, shall not be valued at an amount greater
6 than the unpaid principal of the defaulted loan or contract at the date
7 of such acquisition, together with any taxes and expenses paid or
8 incurred in connection with such acquisition, and the cost of
9 improvements thereafter made by the insurer and any amounts thereafter
10 paid by the insurer on assessments levied for improvements in
11 connection with the property.

12 (2) Other real property held by an insurer shall not be valued at
13 any amount in excess of fair value, less reasonable depreciation based
14 on the estimated life of the improvements.

15 (3) Personal property acquired pursuant to chattel mortgages made
16 under RCW 48.13.150 shall not be valued at an amount greater than the
17 unpaid balance of principal on the defaulted loan at date of
18 acquisition together with taxes and expenses incurred in connection
19 with such acquisition, or the fair value of such property, whichever
20 amount is the lesser.

21 (4) The commissioner has full discretion in determining the method
22 of calculating values according to the rules set forth in this section,
23 and consistent with such methods as then adopted by the national
24 association of insurance commissioners.

25 **Sec. 53.** RCW 48.12.200 and 1947 c 79 s .12.20 are each amended to
26 read as follows:

27 (1) Purchase money mortgages shall be valued in an amount not
28 exceeding the acquisition cost of the real property covered thereby or

1 ninety percent of the fair value of such real property, whichever is
2 less.

3 (2) The commissioner has full discretion in determining the method
4 of calculating values according to the rules set forth in this section,
5 and consistent with such methods as then adopted by the national
6 association of insurance commissioners.

7 **Sec. 54.** RCW 48.14.010 and 1988 c 248 s 7 are each amended to read
8 as follows:

9 (1) The commissioner shall collect in advance the following fees:

10 **(a) For filing charter documents:**

11 (i) Original charter documents, bylaws or
12 record of organization of insurers, or
13 certified copies thereof, required to
14 be filed \$250.00

15 (ii) Amended charter documents, or certified
16 copy thereof, other than amendments of
17 bylaws \$ 10.00

18 (iii) No additional charge or fee shall be
19 required for filing any of such
20 documents in the office of the
21 secretary of state.

22 **(b) Certificate of authority:**

23 (i) Issuance \$ 25.00

24 (ii) Renewal \$ 25.00

25 **(c) Annual statement of insurer, filing \$ 20.00**

26 **(d) Organization or financing of domestic insurers and**
27 **affiliated corporations:**

28 (i) Application for solicitation permit, filing \$100.00

29 (ii) Issuance of solicitation permit \$ 25.00

1	(e) Agents' licenses:	
2	(i) Agent's qualification licenses each year	\$ 25.00
3	(ii) Filing of appointment of each such agent,	
4	each year	\$ 10.00
5	(iii) Limited license issued pursuant to RCW	
6	48.17.190, each year	\$ 10.00
7	(f) <u>Reinsurance intermediary licenses:</u>	
8	<u>(i) Reinsurance intermediary-broker, each</u>	
9	<u> year</u>	<u>\$ 50.00</u>
10	<u>(ii) Reinsurance intermediary-manager, each</u>	
11	<u> year</u>	<u>\$100.00</u>
12	(g) Brokers' licenses:	
13	(i) Broker's license, each year	\$ 50.00
14	(ii) Surplus line broker, each year	\$100.00
15	((g)) (h) Solicitors' license, each year.	\$ 10.00
16	((h)) (i) Adjusters' licenses:	
17	(i) Independent adjuster, each year	\$ 25.00
18	(ii) Public adjuster, each year	\$ 25.00
19	((i)) (j) Resident general agent's license, each year	\$ 25.00
20	((j)) (k) <u>Managing general agent appointment, each</u>	
21	<u> year</u>	<u>\$100.00</u>
22	<u>(l) Examination for license, each examination:</u>	
23	All examinations, except examinations administered	
24	by an independent testing service, the fees for	
25	which are to be approved by the commissioner and	
26	collected directly by and retained by such	
27	independent testing service	\$ 10.00
28	((k)) (m) <u>Miscellaneous services:</u>	
29	(i) Filing other documents	\$ 5.00
30	(ii) Commissioner's certificate under seal	\$ 5.00

1 (iii) Copy of documents filed in the commissioner's
2 office, reasonable charge therefor as
3 determined by the commissioner.

4 (2) All fees so collected shall be remitted by the commissioner to
5 the state treasurer not later than the first business day following,
6 and shall be placed to the credit of the general fund: PROVIDED, That
7 fees for examinations administered by an independent testing service
8 which are approved by the commissioner pursuant to subsection
9 (1)((+j)) (1) of this section shall be collected directly by such
10 independent testing service and retained by it.

11 NEW SECTION. Sec. 55. (1) An officer, manager, director,
12 trustee, owner, employee, or agent of an insurer or other person with
13 authority over or in charge of a segment of the insurer's affairs shall
14 cooperate with the commissioner in a proceeding under this chapter or
15 an investigation preliminary to the proceeding. The term "person" as
16 used in this section includes a person who exercises control directly
17 or indirectly over activities of the insurer through a holding company
18 or other affiliate of the insurer. "To cooperate" as used in this
19 section includes the following:

20 (a) To reply promptly in writing to any inquiry from the
21 commissioner requesting such a reply; and

22 (b) To make available to the commissioner books, accounts,
23 documents, or other records or information or property of or pertaining
24 to the insurer and in his or her possession, custody, or control.

25 (2) A person may not obstruct or interfere with the commissioner in
26 the conduct of a delinquency proceeding or an investigation preliminary
27 or incidental thereto.

1 (3) This section does not abridge existing legal rights, including
2 the right to resist a petition for liquidation or other delinquency
3 proceedings, or other orders.

4 (4) A person included within subsection (1) of this section who
5 fails to cooperate with the commissioner, or a person who obstructs or
6 interferes with the commissioner in the conduct of any delinquency
7 proceeding or an investigation preliminary or incidental thereto, or
8 who violates an order the commissioner issued validly under this
9 chapter may:

10 (a) Be sentenced to pay a fine not exceeding ten thousand dollars
11 or to undergo imprisonment for a term of not more than one year, or
12 both; or

13 (b) After a hearing, be subject to the imposition by the
14 commissioner of a civil penalty not to exceed ten thousand dollars and
15 be subject further to the revocation or suspension of insurance
16 licenses issued by the commissioner.

17 NEW SECTION. **Sec. 56.** (1) No delinquency proceeding may be
18 commenced under this chapter by anyone other than the commissioner of
19 this state and no court has jurisdiction to entertain a proceeding
20 commenced by another person.

21 (2) No court of this state has jurisdiction to entertain a
22 complaint praying for the dissolution, liquidation, rehabilitation,
23 sequestration, conservation, or receivership of an insurer, or praying
24 for an injunction or restraining order or other relief preliminary to,
25 incidental to, or relating to such proceedings, other than in
26 accordance with this chapter.

27 (3) In addition to other grounds for jurisdiction provided by the
28 law of this state, a court of this state having jurisdiction of the
29 subject matter has jurisdiction over a person served under the rules of

1 civil procedure or other applicable provisions of law in an action
2 brought by the receiver of a domestic insurer or an alien insurer
3 domiciled in this state:

4 (a) If the person served is an agent, broker, or other person who
5 has written policies of insurance for or has acted in any manner on
6 behalf of an insurer against which a delinquency proceeding has been
7 instituted, in an action resulting from or incident to such a
8 relationship with the insurer; or

9 (b) If the person served is a reinsurer who has entered into a
10 contract of reinsurance with an insurer against which a delinquency
11 proceeding has been instituted, or is an agent or broker of or for the
12 reinsurer, in an action on or incident to the reinsurance contract; or

13 (c) If the person served is or has been an officer, director,
14 manager, trustee, organizer, promoter, or other person in a position of
15 comparable authority or influence over an insurer against which a
16 delinquency proceeding has been instituted, in an action resulting from
17 or incident to such a relationship with the insurer; or

18 (d) If the person served is or was at the time of the institution
19 of the delinquency proceeding against the insurer holding assets in
20 which the receiver claims an interest on behalf of the insurer, in an
21 action concerning the assets; or

22 (e) If the person served is obligated to the insurer in any way, in
23 an action on or incident to the obligation.

24 (4) If the court on motion of a party finds that an action should
25 as a matter of substantial justice be tried in a forum outside this
26 state, the court may enter an appropriate order to stay further
27 proceedings on the action in this state.

28 NEW SECTION. **Sec. 57.** (1) The persons entitled to protection
29 under this section are:

1 (a) The commissioner and any other receiver responsible for the
2 conduct of a delinquency proceeding under this chapter, including
3 present and former commissioners and receivers; and

4 (b) The commissioner's employees, meaning all present and former
5 special deputies and assistant special deputies and special receivers
6 appointed by the commissioner and all persons whom the commissioner,
7 special deputies, or assistant special deputies have employed to assist
8 in a delinquency proceeding under this chapter. Attorneys,
9 accountants, auditors, and other professional persons or firms who are
10 retained as independent contractors, and their employees, shall not be
11 considered employees of the commissioner for purposes of this section.

12 (2) The commissioner and the commissioner's employees are immune
13 from suit and liability, both personally and in their official
14 capacities, for a claim for damage to or loss of property or personal
15 injury or other civil liability caused by or resulting from an alleged
16 act or omission of the commissioner or an employee arising out of or by
17 reason of his or her duties or employment. However, nothing in this
18 subsection may be construed to hold the commissioner or an employee
19 immune from suit or liability for any damage, loss, injury, or
20 liability caused by the intentional or willful and wanton misconduct of
21 the commissioner or an employee.

22 (3) If a legal action is commenced against the commissioner or an
23 employee, whether against him or her personally or in his or her
24 official capacity, alleging property damage, property loss, personal
25 injury, or other civil liability caused by or resulting from an alleged
26 act or omission of the commissioner or an employee arising out of or by
27 reason of his or her duties or employment, the commissioner and any
28 employee shall be indemnified from the assets of the insurer for all
29 expenses, attorneys' fees, judgments, settlements, decrees, or amounts
30 due and owing or paid in satisfaction of or incurred in the defense of

1 the legal action unless it is determined upon a final adjudication on
2 the merits that the alleged act or omission of the commissioner or
3 employee giving rise to the claim did not arise out of or by reason of
4 his or her duties or employment, or was caused by intentional or
5 willful and wanton misconduct.

6 (a) Attorneys' fees and related expenses incurred in defending a
7 legal action for which immunity or indemnity is available under this
8 section shall be paid from the assets of the insurer, as they are
9 incurred, in advance of the final disposition of such action upon
10 receipt of an undertaking by or on behalf of the commissioner or
11 employee to repay the attorneys' fees and expenses if it shall
12 ultimately be determined upon a final adjudication on the merits and
13 that the commissioner or employee is not entitled to immunity or
14 indemnity under this section.

15 (b) Any indemnification under this section is an administrative
16 expense of the insurer.

17 (c) In the event of an actual or threatened litigation against the
18 commissioner or an employee for which immunity or indemnity may be
19 available under this section, a reasonable amount of funds that in the
20 judgment of the commissioner may be needed to provide immunity or
21 indemnity shall be segregated and reserved from the assets of the
22 insurer as security for the payment of indemnity until all applicable
23 statutes of limitation have run or all actual or threatened actions
24 against the commissioner or an employee have been completely and
25 finally resolved, and all obligations of the insurer and the
26 commissioner under this section shall have been satisfied.

27 (d) In lieu of segregation and reserving of funds, the commissioner
28 may, in his or her discretion, obtain a surety bond or make other
29 arrangements that will enable the commissioner to secure fully the
30 payment of all obligations under this section.

1 (4) If a legal action against an employee for which indemnity may
2 be available under this section is settled prior to final adjudication
3 on the merits, the insurer must pay the settlement amount on behalf of
4 the employee, or indemnify the employee for the settlement amount,
5 unless the commissioner determines:

6 (a) That the claim did not arise out of or by reason of the
7 employee's duties or employment; or

8 (b) That the claim was caused by the intentional or willful and
9 wanton misconduct of the employee.

10 (5) In a legal action in which the commissioner is a defendant,
11 that portion of a settlement relating to the alleged act or omission of
12 the commissioner is subject to the approval of the court before which
13 the delinquency proceeding is pending. The court may not approve that
14 portion of the settlement if it determines:

15 (a) That the claim did not arise out of or by reason of the
16 commissioner's duties or employment; or

17 (b) That the claim was caused by the intentional or willful and
18 wanton misconduct of the commissioner.

19 (6) Nothing in this section removes or limits an immunity,
20 indemnity, benefit of law, right, or defense otherwise available to the
21 commissioner, an employee, or any other person, not an employee under
22 subsection (1)(b) of this section, who is employed by or in the office
23 of the commissioner or otherwise employed by the state.

24 (7)(a) Subsection (2) of this section applies to any suit based in
25 whole or in part on an alleged act or omission that takes place on or
26 after the effective date of this section.

27 (b) No legal action lies against the commissioner or an employee
28 based in whole or in part on an alleged act or omission that took place
29 prior to the effective date of this section, unless suit is filed and

1 valid service of process is obtained within twelve months after the
2 effective date of this section.

3 (c) Subsections (3), (4), and (5) of this section apply to a suit
4 that is pending on or filed after the effective date of this section
5 without regard to when the alleged act or omission took place.

6 NEW SECTION. **Sec. 58.** (1) The commissioner may petition the
7 court alleging, with respect to a domestic insurer:

8 (a) That there exists a ground that would justify a court order for
9 a formal delinquency proceeding against an insurer under this chapter;

10 (b) That the interests of policyholders, creditors, or the public
11 will be endangered by delay; and

12 (c) The contents of an order deemed necessary by the commissioner.

13 (2) Upon a filing under subsection (1) of this section, the court
14 may issue forthwith, ex parte and without a hearing, the requested
15 order that shall: Direct the commissioner to take possession and
16 control of all or a part of the property, books, accounts, documents,
17 and other records of an insurer, and of the premises occupied by it for
18 transaction of its business; and until further order of the court
19 enjoin the insurer and its officers, managers, agents, and employees
20 from disposition of its property and from the transaction of its
21 business except with the written consent of the commissioner.

22 (3) The court shall specify in the order what the order's duration
23 shall be, which shall be such time as the court deems necessary for the
24 commissioner to ascertain the condition of the insurer. On motion of
25 either party or on its own motion, the court may from time to time hold
26 hearings it deems desirable after such notice as it deems appropriate,
27 and may extend, shorten, or modify the terms of the seizure order. The
28 court shall vacate the seizure order if the commissioner fails to
29 commence a formal proceeding under this chapter after having had a

1 reasonable opportunity to do so. An order of the court pursuant to a
2 formal proceeding under this chapter vacates the seizure order.

3 (4) Entry of a seizure order under this section does not constitute
4 an anticipatory breach of a contract of the insurer.

5 (5) An insurer subject to an ex parte order under this section may
6 petition the court at any time after the issuance of an order under
7 this section for a hearing and review of the order. The court shall
8 hold the hearing and review not more than fifteen days after the
9 request. A hearing under this subsection may be held privately in
10 chambers and it shall be so held if the insurer proceeded against so
11 requests.

12 (6) If, at any time after the issuance of an order under this
13 section, it appears to the court that a person whose interest is or
14 will be substantially affected by the order did not appear at the
15 hearing and has not been served, the court may order that notice be
16 given. An order that notice be given does not stay the effect of an
17 order previously issued by the court.

18 NEW SECTION. **Sec. 59.** (1) All policies, including bonds and
19 other noncancellable business, other than life or health insurance or
20 annuities, in effect at the time of issuance of an order of liquidation
21 continue in force only until the earliest of:

22 (a) The end of a period of thirty days from the date of entry of
23 the liquidation order;

24 (b) The expiration of the policy coverage;

25 (c) The date when the insured has replaced the insurance coverage
26 with equivalent insurance in another insurer or otherwise terminated
27 the policy;

28 (d) The liquidator has effected a transfer of the policy
29 obligation; or

1 (e) The date proposed by the liquidator and approved by the court
2 to cancel coverage.

3 (2) An order of liquidation terminates coverages at the time
4 specified in subsection (1) of this section for purposes of any other
5 statute.

6 (3) Policies of life or health insurance or annuities shall
7 continue in force for the period and under the terms provided by an
8 applicable guaranty association or foreign guaranty association.

9 (4) Policies of life or health insurance or annuities or a period
10 or coverage of the policies not covered by a guaranty association or
11 foreign guaranty association shall terminate under subsections (1) and
12 (2) of this section.

13 NEW SECTION. **Sec. 60.** (1) Upon issuance of an order appointing
14 a liquidator of a domestic insurer or of an alien insurer domiciled in
15 this state, an action at law or equity or in arbitration may not be
16 brought against the insurer or liquidator, whether in this state or
17 elsewhere, nor may such an existing action be maintained or further
18 presented after issuance of the order. The courts of this state shall
19 give full faith and credit to injunctions against the liquidator or the
20 company when the injunctions are included in an order to liquidate an
21 insurer issued under laws in other states corresponding to this
22 subsection. Whenever, in the liquidator's judgment, protection of the
23 estate of the insurer necessitates intervention in an action against
24 the insurer that is pending outside this state, the liquidator may
25 intervene in the action. The liquidator may defend an action in which
26 he or she intervenes under this section at the expense of the estate of
27 the insurer.

28 (2) The liquidator may, upon or after an order for liquidation,
29 within two years or such other longer time as applicable law may

1 permit, institute an action or proceeding on behalf of the estate of
2 the insurer upon a cause of action against which the period of
3 limitation fixed by applicable law has not expired at the time of the
4 filing of the petition upon which the order is entered. Where, by an
5 agreement, a period of limitation is fixed for instituting a suit or
6 proceeding upon a claim, or for filing a claim, proof of claim, proof
7 of loss, demand, notice, or the like, or where in a proceeding,
8 judicial or otherwise, a period of limitation is fixed, either in the
9 proceeding or by applicable law, for taking an action, filing a claim
10 or pleading, or doing an act, and where in such a case the period had
11 not expired at the date of the filing of the petition, the liquidator
12 may, for the benefit of the estate, take such an action or do such an
13 act, required of or permitted to the insurer, within a period of one
14 hundred eighty days after the entry of an order for liquidation, or
15 within such further period as is shown to the satisfaction of the court
16 not to be unfairly prejudicial to the other party.

17 (3) A statute of limitation or defense of laches does not run with
18 respect to an action against an insurer between the filing of a
19 petition for liquidation against an insurer and the denial of the
20 petition. An action against the insurer that might have been commenced
21 when the petition was filed may be commenced for at least sixty days
22 after the petition is denied.

23 (4) A guaranty association or foreign guaranty association has
24 standing to appear in a court proceeding concerning the liquidation of
25 an insurer if the association is or may become liable to act as a
26 result of the liquidation.

27 NEW SECTION. **Sec. 61.** The amount recoverable by the
28 commissioner from reinsurers may not be reduced as a result of the
29 delinquency proceedings, regardless of any provision in the reinsurance

1 contract or other agreement. Payment made directly to an insured or
2 other creditor shall not diminish the reinsurer's obligation to the
3 insurer's estate except when the reinsurance contract provided for
4 direct coverage of a named insured and the payment was made in
5 discharge of that obligation.

6 NEW SECTION. **Sec. 62.** (1)(a) An agent, broker, premium finance
7 company, or any other person, other than the policy owner or the
8 insured, responsible for the payment of a premium is obligated to pay
9 any unpaid premium for the full policy term due the insurer at the time
10 of the declaration of insolvency, whether earned or unearned, as shown
11 on the records of the insurer. The liquidator also has the right to
12 recover from the person a part of an unearned premium that represents
13 commission of the person. Credits or setoffs or both may not be
14 allowed to an agent, broker, or premium finance company for amounts
15 advanced to the insurer by the agent, broker, or premium finance
16 company on behalf of, but in the absence of a payment by, the policy
17 owner or the insured.

18 (b) An insured is obligated to pay any unpaid earned premium due
19 the insurer at the time of the declaration of insolvency, as shown on
20 the records of the insurer.

21 (2) Upon a violation of this section, the commissioner may pursue
22 either one or both of the following courses of action:

23 (a) Suspend or revoke or refuse to renew the licenses of the
24 offending party or parties;

25 (b) Impose a penalty of not more than one thousand dollars for each
26 violation.

27 (3) Before the commissioner may take an action as set forth in
28 subsection (2) of this section, he or she shall give written notice to
29 the person accused of violating the law, stating specifically the

1 nature of the alleged violation, and fixing a time and place, at least
2 ten days thereafter, when a hearing on the matter shall be held. After
3 the hearing, or upon failure of the accused to appear at the hearing,
4 the commissioner, if he or she finds a violation, shall impose those
5 penalties under subsection (2) of this section that he or she deems
6 advisable.

7 (4) When the commissioner takes action in any or all of the ways
8 set out in subsection (2) of this section, the party aggrieved has the
9 rights granted under the administrative procedure act, chapter 34.05
10 RCW.

11 NEW SECTION. **Sec. 63.** (1) When a claim is denied in whole or
12 in part by the liquidator, written notice of the determination must be
13 given to the claimant or the claimant's attorney by first class mail at
14 the address shown in the proof of claim. Within sixty days from the
15 mailing of the notice, the claimant may file his or her objections with
16 the liquidator. If no such a filing is made, the claimant may not
17 further object to the determination.

18 (2) Whenever objections are filed with the liquidator and the
19 liquidator does not alter his or her denial of the claim as a result of
20 the objections, the liquidator shall ask the court for a hearing as
21 soon as practicable and give notice of the hearing by first class mail
22 to the claimant or the claimant's attorney and to other persons
23 directly affected, not less than ten nor more than thirty days before
24 the date of the hearing. The matter may be heard by the court or by a
25 court-appointed referee who shall submit findings of fact along with
26 his or her recommendation.

27 NEW SECTION. **Sec. 64.** Whenever a creditor whose claim against
28 an insurer is secured, in whole or in part, by the undertaking of

1 another person, fails to prove and file that claim, the other person
2 may do so in the creditor's name, and shall be subrogated to the rights
3 of the creditor, whether the claim has been filed by the creditor or by
4 the other person in the creditor's name, to the extent that he or she
5 discharges the undertaking. In the absence of an agreement with the
6 creditor to the contrary, the other person is not entitled to a
7 distribution until the amount paid to the creditor on the undertaking
8 plus the distributions paid on the claim from the insurer's estate to
9 the creditor equals the amount of the entire claim of the creditor.
10 Excess received by the creditor shall be held by him or her in trust
11 for the other person. The term "other person" as used in this section
12 does not apply to a guaranty association or foreign guaranty
13 association.

14 NEW SECTION. **Sec. 65.** Unclaimed funds subject to distribution
15 remaining in the liquidator's hands when he or she is ready to apply to
16 the court for discharge, including the amount distributable to a person
17 who is unknown or cannot be found, shall be deposited with the state
18 treasurer, and shall be paid without interest to the person entitled
19 thereto or his or her legal representative upon proof satisfactory to
20 the state treasurer of his or her right thereto. An amount on deposit
21 not claimed within six years from the discharge of the liquidator is
22 deemed to have been abandoned and shall be escheated without formal
23 escheat proceedings and be deposited with the state treasurer.

24 NEW SECTION. **Sec. 66.** After the liquidation proceeding has
25 been terminated and the liquidator discharged, the commissioner or
26 other interested party may at any time petition the court to reopen the
27 proceedings for good cause, including the discovery of additional

1 assets. If the court is satisfied that there is justification for
2 reopening, it shall so order.

3 NEW SECTION. **Sec. 67.** (1) If no domiciliary receiver has been
4 appointed, the commissioner may apply to the court for an order
5 directing him or her to liquidate the assets found in this state of a
6 foreign insurer or an alien insurer not domiciled in this state, on any
7 of the grounds stated in: RCW 48.31.030, except (10); 48.31.050(2); or
8 48.31.080.

9 (2) When an order is sought under subsection (1) of this section,
10 the court shall cause the insurer to be given thirty days' notice and
11 time to respond, or a lesser period reasonable under the circumstances.

12 (3) If it appears to the court that the best interests of
13 creditors, policyholders, and the public require, the court may issue
14 an order to liquidate in whatever terms it deems appropriate. The
15 filing or recording of the order with the recorder of deeds of the
16 county in which the principal business of the company in this state is
17 located or the county in which its principal office or place of
18 business in this state is located, imparts the same notice as a deed or
19 other evidence of title duly filed or recorded with that recorder of
20 deeds would have imparted.

21 (4) If a domiciliary liquidator is appointed in a reciprocal state
22 while a liquidation is proceeding under this section, the liquidator
23 under this section shall thereafter act as ancillary receiver under RCW
24 48.31.130. If a domiciliary liquidator is appointed in a nonreciprocal
25 state while a liquidation is proceeding under this section, the
26 liquidator under this section may petition the court for permission to
27 act as ancillary receiver under RCW 48.31.130.

28 (5) On the same grounds as are specified in subsection (1) of this
29 section, the commissioner may petition an appropriate federal court to

1 be appointed receiver to liquidate that portion of the insurer's assets
2 and business over which the court will exercise jurisdiction, or any
3 lesser part thereof that the commissioner deems desirable for the
4 protection of policyholders, creditors, and the public in this state.

5 (6) The court may order the commissioner, when he or she has
6 liquidated the assets of a foreign or alien insurer under this section,
7 to pay claims of residents of this state against the insurer under
8 those rules on the liquidation of insurers under this chapter that are
9 otherwise compatible with the provisions of this section.

10 NEW SECTION. **Sec. 68.** (1) Except as to special deposits and
11 security on secured claims under RCW 48.31.130(2), the domiciliary
12 liquidator of an insurer domiciled in a reciprocal state shall be
13 vested by operation of law with the title to all of the assets,
14 property, contracts, and rights of action, agents' balances, and all
15 the books, accounts, and other records of the insurer located in this
16 state. The date of vesting is the date of the filing of the petition,
17 if that date is specified by the domiciliary law for the vesting of
18 property in the domiciliary state. Otherwise, the date of vesting is
19 the date of entry of the order directing possession to be taken. The
20 domiciliary liquidator has the immediate right to recover balances due
21 from agents and to obtain possession of the books, accounts, and other
22 records of the insurer located in this state. The domiciliary
23 liquidator also has the right to recover all other assets of the
24 insurer located in this state, subject to RCW 48.31.130.

25 (2) If a domiciliary liquidator is appointed for an insurer not
26 domiciled in a reciprocal state, the commissioner of this state is
27 vested by operation of law with the title to all of the property,
28 contracts, and rights of action, and all the books, accounts, and other
29 records of the insurer located in this state, at the same time that the

1 domiciliary liquidator is vested with title in the domicile. The
2 commissioner of this state may petition for a conservation or
3 liquidation order under RCW 48.31.100 or 48.31.130, or for an ancillary
4 receivership under RCW 48.31.130, or after approval by the court may
5 transfer title to the domiciliary liquidator, as the interests of
6 justice and the equitable distribution of the assets require.

7 (3) Claimants residing in this state may file claims with the
8 liquidator or ancillary receiver, if any, in this state or with the
9 domiciliary liquidator, if the domiciliary law permits. The claims
10 must be filed on or before the last date fixed for the filing of claims
11 in the domiciliary liquidation proceedings.

12 NEW SECTION. **Sec. 69.** The commissioner in his or her sole
13 discretion may institute proceedings under section 58 of this act at
14 the request of the commissioner or other appropriate insurance official
15 of the domiciliary state of a foreign or alien insurer having property
16 located in this state.

17 NEW SECTION. **Sec. 70.** (1) In a liquidation proceeding in this
18 state involving one or more reciprocal states, the order of
19 distribution of the domiciliary state controls as to claims of
20 residents of this and reciprocal states. Claims of residents of
21 reciprocal states shall be given equal priority of payment from general
22 assets regardless of where the assets are located.

23 (2) The owners of special deposit claims against an insurer for
24 which a liquidator is appointed in this or any other state shall be
25 given priority against the special deposits in accordance with the
26 statutes governing the creation and maintenance of the deposits. If
27 there is a deficiency in a deposit, so that the claims secured by it
28 are not fully discharged from it, the claimants may share in the

1 general assets, but the sharing shall be deferred until general
2 creditors, and also claimants against other special deposits who have
3 received smaller percentages from their respective special deposits,
4 have been paid percentages of their claims equal to the percentage paid
5 from the special deposit.

6 (3) The owner of a secured claim against an insurer for which a
7 liquidator has been appointed in this or another state may surrender
8 his or her security and file his or her claim as a general creditor, or
9 the claim may be discharged by resort to the security, in which case
10 the deficiency, if any, shall be treated as a claim against the general
11 assets of the insurer on the same basis as claims of unsecured
12 creditors.

13 NEW SECTION. **Sec. 71.** If an ancillary receiver in another
14 state or foreign country, whether called by that name or not, fails to
15 transfer to the domiciliary liquidator in this state assets within his
16 or her control other than special deposits, diminished only by the
17 expenses of the ancillary receivership, if any, then the claims filed
18 in the ancillary receivership, other than special deposit claims or
19 secured claims, shall be placed in the class of claims under RCW
20 48.31.280(7).

21 **Sec. 72.** RCW 48.31.030 and 1949 c 190 s 28 are each amended to
22 read as follows:

23 The commissioner may apply for an order directing him or her to
24 rehabilitate a domestic insurer upon one or more of the following
25 grounds: That the insurer

26 (1) Is insolvent; or

27 (2) Has refused to submit its books, records, accounts or affairs
28 to the reasonable examination of the commissioner; or

1 (3) Has failed to comply with the commissioner's order, made
2 pursuant to law, to make good an impairment of capital (if a stock
3 insurer) or an impairment of assets (if a mutual or reciprocal insurer)
4 within the time prescribed by law; or

5 (4) Has transferred or attempted to transfer substantially its
6 entire property or business, or has entered into any transaction the
7 effect of which is to merge substantially its entire property or
8 business in that of any other insurer without first having obtained the
9 written approval of the commissioner; or

10 (5) Is found, after examination, to be in such condition that its
11 further transaction of business will be hazardous to its policyholders,
12 or to its creditors, or to its members, subscribers, or stockholders,
13 or to the public; or

14 (6) Has willfully violated its charter or any law of this state; or

15 (7) Has an officer, director, or manager who has refused to be
16 examined under oath, concerning its affairs, for which purpose the
17 commissioner is authorized to conduct and to enforce by all appropriate
18 and available means any such examination under oath in any other state
19 or territory of the United States, in which any such officer, director
20 or manager may then presently be, to the full extent permitted by the
21 laws of any such other state or territory, this special authorization
22 considered; or

23 (8) Has been the subject of an application for the appointment of
24 a receiver, trustee, custodian or sequestrator of the insurer or of its
25 property, or if a receiver, trustee, custodian, or sequestrator is
26 appointed by a federal court or if such appointment is imminent; or

27 (9) Has consented to such an order through a majority of its
28 directors, stockholders, members, or subscribers; or

29 (10) Has failed to pay a final judgment rendered against it in any
30 state upon any insurance contract issued or assumed by it, within

1 thirty days after the judgment became final or within thirty days after
2 time for taking an appeal has expired, or within thirty days after
3 dismissal of an appeal before final determination, whichever date is
4 the later; or

5 (11) There is reasonable cause to believe that there has been
6 embezzlement from the insurer, wrongful sequestration or diversion of
7 the insurer's assets, forgery or fraud affecting the insurer, or other
8 illegal conduct in, by, or with respect to the insurer that if
9 established would endanger assets in an amount threatening the solvency
10 of the insurer; or

11 (12) The insurer has failed to remove any person who in fact has
12 executive authority in the insurer, whether an officer, manager,
13 general agent, employee, or other person, if the person has been found
14 after notice and hearing by the commissioner to be dishonest or
15 untrustworthy in a way affecting the insurer's business; or

16 (13) Control of the insurer, whether by stock ownership or
17 ownership or otherwise, and whether direct or indirect, is in a person
18 or persons found after notice and hearing to be untrustworthy; or

19 (14) The insurer has failed to file its annual report or other
20 financial report required by statute within the time allowed by law
21 and, after written demand by the commissioner, has failed to give an
22 adequate explanation immediately; or

23 (15) The board of directors or the holders of a majority of the
24 shares entitled to vote, request, or consent to rehabilitation under
25 this chapter.

26 **Sec. 73.** RCW 48.31.040 and 1947 c 79 s .31.04 are each amended to
27 read as follows:

28 (1) An order to rehabilitate a domestic insurer shall direct the
29 commissioner forthwith to take possession of the property of the

1 insurer and to conduct the business thereof, and to take such steps
2 toward removal of the causes and conditions which have made
3 rehabilitation necessary as the court may direct.

4 (2) If at any time the commissioner deems that further efforts to
5 rehabilitate the insurer would be useless, he or she may apply to the
6 court for an order of liquidation.

7 (3) The commissioner, or any interested person upon due notice to
8 the commissioner, at any time may apply for an order terminating the
9 rehabilitation proceeding and permitting the insurer to resume
10 possession of its property and the conduct of its business, but no such
11 order shall be granted except when, after a full hearing, the court has
12 determined that the purposes of the proceedings have been fully
13 accomplished.

14 (4) An order to rehabilitate the business of a domestic insurer, or
15 an alien insurer domiciled in this state, shall appoint the
16 commissioner and his or her successors in office as the rehabilitator,
17 and shall direct the rehabilitator forthwith to take possession of the
18 assets of the insurer, and to administer them under the general
19 supervision of the court. The filing or recording of the order with
20 the recorder of deeds of the county in this state in which the
21 principal business of the company is conducted, or the county in this
22 state in which the company's principal office or place of business is
23 located, shall impart the same notice as a deed or other evidence of
24 title duly filed or recorded with that recorder of deeds would have
25 imparted. The order to rehabilitate the insurer by operation of law
26 vests title to all assets of the insurer in the rehabilitator.

27 (5) An order issued under this section requires accountings to the
28 court by the rehabilitator. Accountings shall be at such intervals as
29 the court specifies in its order, but no less frequently than
30 semiannually.

1 (6) Entry of an order of rehabilitation does not constitute an
2 anticipatory breach of any contracts of the insurer nor may it be
3 grounds for retroactive revocation or retroactive cancellation of any
4 contracts of the insurer, unless the revocation or cancellation is done
5 by the rehabilitator.

6 NEW SECTION. Sec. 74. A new section is added to chapter 48.31 RCW
7 to read as follows:

8 (1) A court in this state before which an action or proceeding in
9 which the insurer is a party, or is obligated to defend a party, is
10 pending when a rehabilitation order against the insurer is entered
11 shall stay the action or proceeding for ninety days and such additional
12 time as is necessary for the rehabilitator to obtain proper
13 representation and prepare for further proceedings. The rehabilitator
14 shall take such action respecting the pending litigation as he or she
15 deems necessary in the interests of justice and for the protection of
16 creditors, policyholders, and the public. The rehabilitator shall
17 immediately consider all litigation pending outside this state and
18 shall petition the courts having jurisdiction over that litigation for
19 stays whenever necessary to protect the estate of the insurer.

20 (2) A statute of limitations or defense of laches does not run with
21 respect to an action by or against an insurer between the filing of a
22 petition for appointment of a rehabilitator for that insurer and the
23 order granting or denying that petition. An action against the insurer
24 that might have been commenced when the petition was filed may be
25 commenced for at least sixty days after the order of rehabilitation is
26 entered or the petition is denied. The rehabilitator may, upon an
27 order for rehabilitation, within one year or such other longer time as
28 applicable law may permit, institute an action or proceeding on behalf
29 of the insurer upon a cause of action against which the period of

1 limitation fixed by applicable law has not expired at the time of the
2 filing of the petition upon which the order is entered.

3 (3) A guaranty association or foreign guaranty association covering
4 life or health insurance or annuities has standing to appear in a court
5 proceeding concerning the rehabilitation of a life or health insurer if
6 the association is or may become liable to act as a result of the
7 rehabilitation.

8 **Sec. 75.** RCW 48.31.280 and 1975-'76 2nd ex.s. c 109 s 1 are each
9 amended to read as follows:

10 ~~((1) Compensation actually owing to employees other than officers~~
11 ~~of an insurer, for services rendered within three months prior to the~~
12 ~~commencement of a proceeding against the insurer under this chapter,~~
13 ~~but not exceeding three hundred dollars for each such employee, shall~~
14 ~~be paid prior to the payment of any other debt or claim, and in the~~
15 ~~discretion of the commissioner may be paid as soon as practicable after~~
16 ~~the proceeding has been commenced; except, that at all times the~~
17 ~~commissioner shall reserve such funds as will in his opinion be~~
18 ~~sufficient for the expenses of administration. Such priority shall be~~
19 ~~in lieu of any other similar priority which may be authorized by law as~~
20 ~~to the wages or compensation of such employees.~~

21 ~~(2) The priorities of distribution in a liquidation proceeding~~
22 ~~shall be in the following order:~~

23 ~~(a) Expenses of administration;~~

24 ~~(b) Compensation of employees as provided in subsection (1) of this~~
25 ~~section;~~

26 ~~(c) Federal, state, and local taxes;~~

27 ~~(d) Claims arising out of and within the coverages of insurance~~
28 ~~policies issued by the insurer being liquidated for losses incurred,~~
29 ~~including:~~

1 ~~(i) Third party claims and claims for unearned premiums;~~

2 ~~(ii) Claims presented by the Washington Insurance Guaranty~~
3 ~~Association which represent "covered claims" as defined in RCW~~
4 ~~48.32.030(4) and which have been paid by such association;~~

5 ~~(iii) Claims to which the Washington life and disability insurance~~
6 ~~guaranty association shall have become subrogated under the provisions~~
7 ~~of RCW 48.32A.060; and~~

8 ~~(iv) Claims similar to those described in parts (ii) and (iii) of~~
9 ~~this subsection as presented by similar guaranty associations of other~~
10 ~~states; and~~

11 ~~(e) All other claims.))~~ The priority of distribution of claims from
12 the insurer's estate are as follows: Every claim in a class shall be
13 paid in full or adequate funds retained for payment before the members
14 of the next class receive any payment; no subclasses may be established
15 within a class; and no claim by a shareholder, policyholder, or other
16 creditor may circumvent the priority classes through the use of
17 equitable remedies. The order of distribution of claims is:

18 (1) Class 1. The costs and expenses of administration during
19 rehabilitation and liquidation, including but not limited to the
20 following:

21 (a) The actual and necessary costs of preserving or recovering the
22 assets of the insurer;

23 (b) Compensation for all authorized services rendered in the
24 rehabilitation and liquidation;

25 (c) Necessary filing fees;

26 (d) The fees and mileage payable to witnesses;

27 (e) Authorized reasonable attorneys' fees and other professional
28 services rendered in the rehabilitation and liquidation;

29 (f) The reasonable expenses of a guaranty association or foreign
30 guaranty association for unallocated loss adjustment expenses.

1 (2) Class 2. Reasonable compensation to employees for services
2 performed to the extent that they do not exceed two months of monetary
3 compensation and represent payment for services performed within one
4 year before the filing of the petition for liquidation or, if
5 rehabilitation preceded liquidation, within one year before the filing
6 of the petition for rehabilitation. Principal officers and directors
7 are not entitled to the benefit of this priority except as otherwise
8 approved by the liquidator and the court. The priority is in lieu of
9 any other similar priority that may be authorized by law as to wages or
10 compensation of employees.

11 (3) Class 3. Loss claims. For purposes of this section, "loss
12 claims" are all claims under policies, including claims of the federal
13 or a state or local government, for losses incurred, including third-
14 party claims and all claims of a guaranty association or foreign
15 guaranty association. All claims under life insurance and annuity
16 policies, whether for death proceeds, annuity proceeds, or investment
17 values, are loss claims. That portion of any loss indemnification for
18 which is provided by other benefits or advantages recovered by the
19 claimant, is not included in this class, other than benefits or
20 advantages recovered or recoverable in discharge of familial obligation
21 of support or by way of succession at death or a proceeds of life
22 insurance, or as gratuities. No payment by an employer to his or her
23 employee shall be treated as a gratuity.

24 (4) Class 4. Claims under nonassessable policies for unearned
25 premium or other premium refunds and claims of general creditors
26 including claims of ceding and assuming companies in their capacity as
27 such.

28 (5) Class 5. Claims of the federal or any state or local
29 government except those under subsection (3) of this section. Claims,
30 including those of any governmental body for a penalty or forfeiture,

1 are allowed in this class only to the extent of the pecuniary loss
2 sustained from the act, transaction, or proceeding out of which the
3 penalty or forfeiture arose, with reasonable and actual costs
4 occasioned thereby. The remainder of such claims are postponed to the
5 class of claims under subsection (8) of this section.

6 (6) Class 6. Claims filed late or any other claims other than
7 claims under subsections (7) and (8) of this section.

8 (7) Class 7. Surplus or contribution notes, or similar
9 obligations, and premium refunds on assessable policies. Payments to
10 members of domestic mutual insurance companies are limited in
11 accordance with law.

12 (8) Class 8. The claims of shareholders or other owners in their
13 capacity as shareholders.

14 **Sec. 76.** RCW 48.31.290 and 1947 c 79 s .31.29 are each amended to
15 read as follows:

16 (1) In all cases of mutual debts or mutual credits between the
17 insurer and another person in connection with any action or proceeding
18 under this chapter, such credits and debts shall be set off and the
19 balance only shall be allowed or paid, except as provided in subsection
20 (2) of this section.

21 (2) No offset shall be allowed in favor of any such person where
22 (a) the obligation of the insurer to such person would not at the date
23 of the entry of any liquidation order, or otherwise, as provided in RCW
24 48.31.260, entitle him or her to share as a claimant in the assets of
25 the insurer, or (b) the obligation of the insurer to such person was
26 purchased by or transferred to such person with a view of its being
27 used as an offset, or (c) the obligation of such person is to pay an
28 assessment levied against the members of a mutual insurer, or against

1 the subscribers of a reciprocal insurer, or is to pay a balance upon a
2 subscription to the capital stock of a stock insurer.

3 (3) A setoff is allowed for those sums accruing from reinsurance
4 where the contracts were entered into, renewed, or extended with the
5 express written approval of the insurance commissioner of the state of
6 domicile of the now-insolvent insurer, when in the judgment of that
7 commissioner it was necessary to provide reinsurance in order to
8 prevent or mitigate a threatened impairment or insolvency of a
9 domiciliary insurer in connection with the exercise of the
10 commissioner's regulatory responsibilities.

11 **Sec. 77.** RCW 48.31.300 and 1947 c 79 s .31.30 are each amended to
12 read as follows:

13 (1) No contingent claim shall share in a distribution of the assets
14 of an insurer which has been adjudicated to be insolvent by an order
15 made pursuant to RCW 48.31.310, except that such claims shall be
16 considered, if properly presented, and may be allowed to share where:

17 (a) Such claim becomes absolute against the insurer on or before
18 the last day fixed for filing of proofs of claim against the assets of
19 such insurer, or

20 (b) There is a surplus and the liquidation is thereafter conducted
21 upon the basis that such insurer is solvent.

22 (2) Where an insurer has been so adjudicated to be insolvent any
23 person who has a cause of action against an insured of such insurer
24 under a liability insurance policy issued by such insurer, shall have
25 the right to file a claim in the liquidation proceeding, regardless of
26 the fact that such claim may be contingent, and such claim may be
27 allowed

1 (a) If it may be reasonably inferred from the proof presented upon
2 such claim that such person would be able to obtain a judgment upon
3 such cause of action against such insured; and

4 (b) If such person shall furnish suitable proof, unless the court
5 for good cause shown shall otherwise direct, that no further valid
6 claims against such insurer arising out of his or her cause of action
7 other than those already presented can be made; and

8 (c) If the total liability of such insurer to all claimants arising
9 out of the same act of its insured shall be no greater than its maximum
10 liability would be were it not in liquidation.

11 No judgment against such an insured taken after the date of the
12 entry of the liquidation order shall be considered in the liquidation
13 proceedings as evidence of liability, or of the amount of damages, and
14 no judgment against an insured taken by default, inquest or by
15 collusion prior to the entry of the liquidation order shall be
16 considered as conclusive evidence in the liquidation proceeding either
17 of the liability of such insured to such person upon such cause of
18 action or of the amount of damages to which such person is therein
19 entitled.

20 (3) No claim of any secured claimant shall be allowed at a sum
21 greater than the difference between the value of the claim without
22 security and the value of the security itself as of the date of the
23 entry of the order of liquidation or such other date set by the court
24 for fixation of rights and liabilities as provided in RCW 48.31.260
25 unless the claimant shall surrender his or her security to the
26 commissioner in which event the claim shall be allowed in the full
27 amount for which it is valued.

28 (4) Whether or not the third party files a claim, the insured may
29 file a claim on his or her own behalf in the liquidation.

1 (5) No claim may be presented under this section if it is or may be
2 covered by a guaranty association or foreign guaranty association.

3 NEW SECTION. Sec. 78. A new section is added to chapter 48.74 RCW
4 to read as follows:

5 (1) Every life insurance company doing business in this state shall
6 annually submit the opinion of a qualified actuary as to whether the
7 reserves and related actuarial items held in support of the policies
8 and contracts specified by the commissioner by regulation are computed
9 appropriately, are based on assumptions which satisfy contractual
10 provisions, are consistent with prior reported amounts, and comply with
11 applicable laws of this state. The commissioner by rule shall define
12 the specifics of this opinion and add any other items deemed to be
13 necessary to its scope.

14 (2)(a) Every life insurance company, except as exempted by rule,
15 shall also include in the opinion required under subsection (1) of this
16 section an opinion as to whether the reserves and related actuarial
17 items held in support of the policies and contracts specified by the
18 commissioner by rule, when considered in light of the assets held by
19 the company with respect to the reserves and related actuarial items,
20 including but not limited to the investment earnings on the assets and
21 the considerations anticipated to be received and retained under the
22 policies and contracts, make adequate provision for the company's
23 obligations under the policies and contracts, including but not limited
24 to the benefits under and expenses associated with the policies and
25 contracts.

26 (b) The commissioner may provide by rule for a transition period
27 for establishing higher reserves that the qualified actuary may deem
28 necessary in order to render the opinion required by this section.

1 (3) Each opinion required under subsection (2) of this section is
2 governed by the following provisions:

3 (a) A memorandum, in form and substance acceptable to the
4 commissioner as specified by rule, shall be prepared to support each
5 actuarial opinion.

6 (b) If the insurance company fails to provide a supporting
7 memorandum at the request of the commissioner within a period specified
8 by regulation or if the commissioner determines that the supporting
9 memorandum provided by the insurance company fails to meet the
10 standards prescribed by the regulations or is otherwise unacceptable to
11 the commissioner, the commissioner may engage a qualified actuary at
12 the expense of the company to review the opinion and the basis for the
13 opinion and prepare such supporting memorandum as is required by the
14 commissioner.

15 (4) Any memorandum in support of the opinion, and any other
16 material provided by the company to the commissioner in connection
17 therewith, shall be kept confidential by the commissioner and shall not
18 be made public and is not subject to subpoena, other than for the
19 purpose of defending an action seeking damages from any person by
20 reason of any action required by this section or by regulations
21 promulgated hereunder. However, the memorandum or other material may
22 otherwise be released by the commissioner (a) with the written consent
23 of the company or (b) to the American academy of actuaries upon request
24 stating that the memorandum or other material is required for the
25 purpose of professional disciplinary proceedings and setting forth
26 procedures satisfactory to the commissioner for preserving the
27 confidentiality of the memorandum or other material. Once any portion
28 of the confidential memorandum is cited by the company in its marketing
29 or is cited before any governmental agency other than a state insurance

1 department or is released by the company to the news media, all
2 portions of the confidential memorandum are no longer confidential.

3 (5) Each opinion required under this section is governed by the
4 following provisions:

5 (a) The opinion shall be submitted with the annual statement
6 reflecting the valuation of the reserve liabilities for each year
7 ending on or after December 31, 1993.

8 (b) The opinion shall apply to all business in force including
9 individual and group disability insurance, in form and substance
10 acceptable to the commissioner as specified by rule.

11 (c) The opinion shall be based on standards adopted by the
12 commissioner, who in setting the standards shall give due regard to the
13 standards established by the actuarial standards board or its
14 successors.

15 (d) In the case of an opinion required to be submitted by a foreign
16 or alien company, the commissioner may accept the opinion filed by that
17 company with the insurance supervisory official of another state if the
18 commissioner determines that the opinion reasonably meets the
19 requirements applicable to a company domiciled in this state.

20 (e) For purposes of this section, "qualified actuary" means a
21 person who meets qualifications set by the commissioner with due regard
22 to the qualifications established for membership in the American
23 academy of actuaries or its successors.

24 (f) Except in cases of fraud or willful misconduct, the qualified
25 actuary is not liable for damages to any person, other than the
26 insurance company and the commissioner, for any act, error, omission,
27 decision, or conduct with respect to the actuary's opinion.

28 (g) Disciplinary action by the commissioner against the company or
29 the qualified actuary shall be defined in rules adopted by the
30 commissioner.

1 **Sec. 79.** RCW 48.74.030 and 1982 1st ex.s. c 9 s 3 are each amended
2 to read as follows:

3 (1) Except as otherwise provided in subsections (2) and (3) of this
4 section, or in section 83 of this act, the minimum standard for the
5 valuation of all such policies and contracts issued prior to July 10,
6 1982, shall be that provided by the laws in effect immediately prior to
7 such date. Except as otherwise provided in subsections (2) and (3) of
8 this section, or in section 83 of this act, the minimum standard for
9 the valuation of all such policies and contracts issued on or after
10 July 10, 1982, shall be the commissioner's reserve valuation methods
11 defined in RCW 48.74.040 (~~and~~), 48.74.070, and section 83 of this
12 act, three and one-half percent interest, or in the case of life
13 insurance policies and contracts, other than annuity and pure endowment
14 contracts, issued on or after July 16, 1973, four percent interest for
15 such policies issued prior to September 1, 1979, five and one-half
16 percent interest for single premium life insurance policies and four
17 and one-half percent interest for all other such policies issued on and
18 after September 1, 1979, and the following tables:

19 (a) For all ordinary policies of life insurance issued on the
20 standard basis, excluding any disability and accidental death benefits
21 in such policies--the commissioner's 1941 standard ordinary mortality
22 table for such policies issued prior to the operative date of RCW
23 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality
24 table for such policies issued on or after such operative date and
25 prior to the operative date of RCW 48.76.050(4), except that for any
26 category of such policies issued on female risks, all modified net
27 premiums and present values referred to in this chapter may be
28 calculated according to an age not more than six years younger than the
29 actual age of the insured; and for such policies issued on or after the
30 operative date of RCW 48.76.050(4): (i) The commissioner's 1980

1 standard ordinary mortality table; or (ii) at the election of the
2 company for any one or more specified plans of life insurance, the
3 commissioner's 1980 standard ordinary mortality table with ten-year
4 select mortality factors; or (iii) any ordinary mortality table,
5 adopted after 1980 by the National Association of Insurance
6 Commissioners, that is approved by regulation promulgated by the
7 commissioner for use in determining the minimum standard of valuation
8 for such policies.

9 (b) For all industrial life insurance policies issued on the
10 standard basis, excluding any disability and accidental death benefits
11 in such policies--the 1941 standard industrial mortality table for such
12 policies issued prior to the operative date of RCW 48.23.350(5b), and
13 for such policies issued on or after such operative date the
14 commissioner's 1961 standard industrial mortality table or any
15 industrial mortality table, adopted after 1980 by the National
16 Association of Insurance Commissioners, that is approved by rule of the
17 commissioner for use in determining the minimum standard of valuation
18 for such policies.

19 (c) For individual annuity and pure endowment contracts, excluding
20 any disability and accidental death benefits in such policies--the 1937
21 standard annuity mortality table or, at the option of the company, the
22 annuity mortality table for 1949, ultimate, or any modification of
23 either of these tables approved by the commissioner.

24 (d) For group annuity and pure endowment contracts, excluding any
25 disability and accidental death benefits in such policies--the group
26 annuity mortality table for 1951, any modification of such table
27 approved by the commissioner, or, at the option of the company, any of
28 the tables or modifications of (~~table[s]~~) tables specified for
29 individual annuity and pure endowment contracts.

1 (e) For total and permanent disability benefits in or supplementary
2 to ordinary policies or contracts--for policies or contracts issued on
3 or after January 1, 1966, the tables of period 2 disablement rates and
4 the 1930 to 1950 termination rates of the 1952 disability study of the
5 Society of Actuaries, with due regard to the type of benefit or any
6 tables of disablement rates and termination rates, adopted after 1980
7 by the National Association of Insurance Commissioners, that are
8 approved by regulation promulgated by the commissioner for use in
9 determining the minimum standard of valuation for such policies; for
10 policies or contracts issued on or after January 1, 1961, and prior to
11 January 1, 1966, either such tables or, at the option of the company,
12 the class (3) disability table (1926); and for policies issued prior to
13 January 1, 1961, the class (3) disability table (1926). Any such table
14 shall, for active lives, be combined with a mortality table permitted
15 for calculating the reserves for life insurance policies.

16 (f) For accidental death benefits in or supplementary to policies--
17 for policies issued on or after January 1, 1966, the 1959 accidental
18 death benefits table or any accidental death benefits table, adopted
19 after 1980 by the National Association of Insurance Commissioners, that
20 is approved by regulation promulgated by the commissioner for use in
21 determining the minimum standard of valuation for such policies; for
22 policies issued on or after January 1, 1961, and prior to January 1,
23 1966, either such table or, at the option of the company, the
24 intercompany double indemnity mortality table; and for policies issued
25 prior to January 1, 1961, the intercompany double indemnity mortality
26 table. Either table shall be combined with a mortality table permitted
27 for calculating the reserves for life insurance policies.

28 (g) For group life insurance, life insurance issued on the
29 substandard basis and other special benefits--such tables as may be
30 approved by the commissioner.

1 (2) Except as provided in subsection (3) of this section, the
2 minimum standard for the valuation of all individual annuity and pure
3 endowment contracts issued on or after July 10, 1982, and for all
4 annuities and pure endowments purchased on or after such effective date
5 under group annuity and pure endowment contracts, shall be the
6 commissioner's reserve valuation methods defined in RCW 48.74.040 and
7 the following tables and interest rates:

8 (a) For individual annuity and pure endowment contracts issued
9 before September 1, 1979, excluding any disability and accidental death
10 benefit in such contracts--the 1971 individual annuity mortality table,
11 or any modification of this table approved by the commissioner, and six
12 percent interest for single premium immediate annuity contracts, and
13 four percent interest for all other individual annuity and pure
14 endowment contracts.

15 (b) For individual single premium immediate annuity contracts
16 issued on or after September 1, 1979, excluding any disability and
17 accidental death benefits in such contracts--the 1971 individual
18 annuity mortality table or any individual annuity mortality table,
19 adopted after 1980 by the National Association of Insurance
20 Commissioners, that is approved by regulation promulgated by the
21 commissioner for use in determining the minimum standard of valuation
22 for such contracts, or any modification of these tables approved by the
23 commissioner, and seven and one-half percent interest.

24 (c) For individual annuity and pure endowment contracts issued on
25 or after September 1, 1979, other than single premium immediate annuity
26 contracts, excluding any disability and accidental death benefits in
27 such contracts--the 1971 individual annuity mortality table or any
28 individual annuity mortality table, adopted after 1980 by the National
29 Association of Insurance Commissioners, that is approved by regulation
30 promulgated by the commissioner for use in determining the minimum

1 standard of valuation for such contracts, or any modification of these
2 tables approved by the commissioner, and five and one-half percent
3 interest for single premium deferred annuity and pure endowment
4 contracts and four and one-half percent interest for all other such
5 individual annuity and pure endowment contracts.

6 (d) For all annuities and pure endowments purchased prior to
7 September 1, 1979, under group annuity and pure endowment contracts,
8 excluding any disability and accidental death benefits purchased under
9 such contracts--the 1971 group annuity mortality table, or any
10 modification of this table approved by the commissioner, and six
11 percent interest.

12 (e) For all annuities and pure endowments purchased on or after
13 September 1, 1979, under group annuity and pure endowment contracts,
14 excluding any disability and accidental death benefits purchased under
15 such contracts--the 1971 group annuity mortality table or any group
16 annuity mortality table, adopted after 1980 by the National Association
17 of Insurance Commissioners, that is approved by regulation promulgated
18 by the commissioner for use in determining the minimum standard of
19 valuation for such annuities and pure endowments, or any modification
20 of these tables approved by the commissioner, and seven and one-half
21 percent interest.

22 After July 16, 1973, any company may file with the commissioner a
23 written notice of its election to comply with the provisions of this
24 section after a specified date before January 1, 1979, which shall be
25 the operative date of this section for such company: PROVIDED, That
26 (~~a company may elect a different operative date for individual annuity~~
27 ~~and pure endowment contracts from that elected for group annuity and~~
28 ~~pure endowment contracts.)) if a company makes no such election, the
29 operative date of this section for such company shall be January 1,
30 1979.~~

1 (3)(a) The interest rates used in determining the minimum standard
2 for the valuation of:

3 (i) All life insurance policies issued in a particular calendar
4 year, on or after the operative date of RCW 48.76.050(4);

5 (ii) All individual annuity and pure endowment contracts issued in
6 a particular calendar year on or after January 1, 1982;

7 (iii) All annuities and pure endowments purchased in a particular
8 calendar year on or after January 1, 1982, under group annuity and pure
9 endowment contracts; and

10 (iv) The net increase, if any, in a particular calendar year after
11 January 1, 1982, in amounts held under guaranteed interest contracts
12 shall be the calendar year statutory valuation interest rates as
13 defined in this section.

14 (b) The calendar year statutory valuation interest rates, I, shall
15 be determined as follows and the results rounded to the nearer one-
16 quarter of one percent:

17 (i) For life insurance:

18
$$I = .03 + W \sqrt{R - .03} + W/2 \sqrt{R - .09};$$

19 (ii) For single premium immediate annuities and for annuity
20 benefits involving life contingencies arising from other annuities with
21 cash settlement options and from guaranteed interest contracts with
22 cash settlement options:

23
$$I = .03 + W (R - .03)$$

24 where \bar{R} is the lesser of R and .09,

25 \underline{R} is the greater of R and .09,

26 R is the reference interest rate defined in this section, and

27 W is the weighting factor defined in this section;

28 (iii) For other annuities with cash settlement options and
29 guaranteed interest contracts with cash settlement options, valued on

1 an issue year basis, except as stated in (ii) of this subparagraph, the
2 formula for life insurance stated in (i) of this subparagraph shall
3 apply to annuities and guaranteed interest contracts with guarantee
4 durations in excess of ten years and the formula for single premium
5 immediate annuities stated in (ii) of this subparagraph shall apply to
6 annuities and guaranteed interest contracts with guarantee duration of
7 ten years or less;

8 (iv) For other annuities with no cash settlement options and for
9 guaranteed interest contracts with no cash settlement options, the
10 formula for single premium immediate annuities stated in (ii) of this
11 subparagraph shall apply;

12 (v) For other annuities with cash settlement options and guaranteed
13 interest contracts with cash settlement options, valued on a change in
14 fund basis, the formula for single premium immediate annuities stated
15 in (ii) of this subparagraph shall apply.

16 (c) However, if the calendar year statutory valuation interest rate
17 for any life insurance policies issued in any calendar year determined
18 without reference to this sentence differs from the corresponding
19 actual rate for similar policies issued in the immediately preceding
20 calendar year by less than one-half of one percent, the calendar year
21 statutory valuation interest rate for such life insurance policies
22 shall be equal to the corresponding actual rate for the immediately
23 preceding calendar year. For purposes of applying the immediately
24 preceding sentence, the calendar year statutory valuation interest rate
25 for life insurance policies issued in a calendar year shall be
26 determined for 1983 using the reference interest rate defined for 1982
27 and shall be determined for each subsequent calendar year regardless of
28 when RCW 48.76.050(4) becomes operative.

29 (d) The weighting factors referred to in the formulas stated in
30 subparagraph (b) of this subsection are given in the following tables:

1 (i) Weighting Factors for Life Insurance:

2 Guarantee Duration	Weighting
3 (Years)	Factors
4 10 or less	.50
5 More than 10, but not more than 20	.45
6 More than 20	.35

7 For life insurance, the guarantee duration is the maximum number of
8 years the life insurance can remain in force on a basis guaranteed in
9 the policy or under options to convert to plans of life insurance with
10 premium rates or nonforfeiture values or both which are guaranteed in
11 the original policy;

12 (ii) Weighting factor for single premium immediate annuities and
13 for annuity benefits involving life contingencies arising from other
14 annuities with cash settlement options and guaranteed interest
15 contracts with cash settlement options: .80;

16 (iii) Weighting factors for other annuities and for guaranteed
17 interest contracts, except as stated in (ii) of this subparagraph,
18 shall be as specified in (d)(iii) (A), (B), and (C) of this subsection,
19 according to the rules and definitions in (d)(iii) (D), (E), and (F) of
20 this subsection:

21 (A) For annuities and guaranteed interest contracts valued on an
22 issue year basis:

1 Guarantee Duration	Weighting Factor		
2	for Plan Type		
3 (Years)	A	B	C
4 5 or less:	.80	.60	.50
5 More than 5, but not more than 10:	.75	.60	.50
6 More than 10, but not more than 20:	.65	.50	.45
7 More than 20:	.45	.35	.35

8 (B) For annuities and guaranteed interest contracts valued on a
9 change in fund basis, the factors shown in (d)(iii) (A) of this
10 subsection increased by:

11	Plan Type		
12	A	B	C
13	.15	.25	.05

14 (C) For annuities and guaranteed interest contracts valued on an
15 issue year basis other than those with no cash settlement options which
16 do not guarantee interest on considerations received more than one year
17 after issue or purchase and for annuities and guaranteed interest
18 contracts valued on a change in fund basis which do not guarantee
19 interest rates on considerations received more than twelve months
20 beyond the valuation date, the factors shown in (d)(iii) (A) of this
21 subsection or derived in (d)(iii) (B) of this subsection increased by:

1 **Plan Type**

2 **A**

B

C

3 .05

.05

.05

4 (D) For other annuities with cash settlement options and guaranteed
5 interest contracts with cash settlement options, the guarantee duration
6 is the number of years for which the contract guarantees interest rates
7 in excess of the calendar year statutory valuation interest rate for
8 life insurance policies with guarantee duration in excess of twenty
9 years. For other annuities with no cash settlement options and for
10 guaranteed interest contracts with no cash settlement options, the
11 guarantee duration is the number of years from the date of issue or
12 date of purchase to the date annuity benefits are scheduled to
13 commence.

14 (E) Plan type as used in the tables in (d)(iii) (A), (B), and (C)
15 of this subsection is defined as follows:

16 Plan Type A: At any time a policyholder may withdraw funds only:
17 (1) With an adjustment to reflect changes in interest rates or asset
18 values since receipt of the funds by the insurance company; or (2)
19 without such adjustment but in installments over five years or more; or
20 (3) as an immediate life annuity; or (4) no withdrawal permitted.

21 Plan Type B: Before expiration of the interest rate guarantee, a
22 policyholder may withdraw funds only: (1) With adjustment to reflect
23 changes in interest rates or asset values since receipt of the funds by
24 the insurance company; or (2) without such adjustment but in
25 installments over five years or more; or (3) no withdrawal permitted.
26 At the end of the interest rate guarantee, funds may be withdrawn
27 without such adjustment in a single sum or installments over less than
28 five years.

1 Plan Type C: A policyholder may withdraw funds before expiration
2 of the interest rate guarantee in a single sum or installments over
3 less than five years either: (1) Without adjustment to reflect changes
4 in interest rates or asset values since receipt of the funds by the
5 insurance company; or (2) subject only to a fixed surrender charge
6 stipulated in the contract as a percentage of the fund.

7 (F) A company may elect to value guaranteed interest contracts with
8 cash settlement options and annuities with cash settlement options on
9 either an issue year basis or on a change in fund basis. Guaranteed
10 interest contracts with no cash settlement options and other annuities
11 with no cash settlement options must be valued on an issue year basis.
12 As used in this section, an issue year basis of valuation refers to a
13 valuation basis under which the interest rate used to determine the
14 minimum valuation standard for the entire duration of the annuity or
15 guaranteed interest contract is the calendar year valuation interest
16 rate for the year of issue or year of purchase of the annuity or
17 guaranteed interest contract. The change in fund basis of valuation
18 refers to a valuation basis under which the interest rate used to
19 determine the minimum valuation standard applicable to each change in
20 the fund held under the annuity or guaranteed interest contract is the
21 calendar year valuation interest rate for the year of the change in the
22 fund.

23 (e) The reference interest rate referred to in subparagraphs (b)
24 and (c) of this subsection is defined as follows:

25 (i) For all life insurance, the lesser of the average over a period
26 of thirty-six months and the average over a period of twelve months,
27 ending on June 30th of the calendar year next preceding the year of
28 issue, of Moody's corporate bond yield average--monthly average
29 corporates, as published by Moody's Investors Service, Inc.

1 (ii) For single premium immediate annuities and for annuity
2 benefits involving life contingencies arising from other annuities with
3 cash settlement options and guaranteed interest contracts with cash
4 settlement options, the average over a period of twelve months, ending
5 on June 30th of the calendar year of issue or year of purchase of
6 Moody's corporate bond yield average--monthly average corporates, as
7 published by Moody's Investors Service, Inc.

8 (iii) For other annuities with cash settlement options and
9 guaranteed interest contracts with cash settlement options, valued on
10 a year of issue basis, except as stated in (ii) of this subparagraph,
11 with guarantee duration in excess of ten years, the lesser of the
12 average over a period of thirty-six months and the average over a
13 period of twelve months, ending on June 30th of the calendar year of
14 issue or purchase, of Moody's corporate bond yield average--monthly
15 average corporates, as published by Moody's Investors Service, Inc.

16 (iv) For other annuities with cash settlement options and
17 guaranteed interest contracts with cash settlement options, valued on
18 a year of issue basis, except as stated in (ii) of this subparagraph,
19 with guarantee duration of ten years or less, the average over a period
20 of twelve months, ending on June 30th of the calendar year of issue or
21 purchase, of Moody's corporate bond yield average--monthly average
22 corporates, as published by Moody's Investors Service, Inc.

23 (v) For other annuities with no cash settlement options and for
24 guaranteed interest contracts with no cash settlement options, the
25 average over a period of twelve months, ending on June 30th of the
26 calendar year of issue or purchase, of Moody's corporate bond yield
27 average--monthly average corporates, as published by Moody's Investors
28 Service, Inc.

29 (vi) For other annuities with cash settlement options and
30 guaranteed interest contracts with cash settlement options, valued on

1 a change in fund basis, except as stated in (ii) of this subparagraph,
2 the average over a period of twelve months, ending on June 30th of the
3 calendar year of the change in the fund, of Moody's corporate bond
4 yield average--monthly average corporates, as published by Moody's
5 Investors Service, Inc.

6 ~~((g))~~ (f) If Moody's corporate bond yield average--monthly
7 average corporates is no longer published by Moody's Investors Service,
8 Inc., or if the National Association of Insurance Commissioners
9 determines that Moody's corporate bond yield average--monthly average
10 corporates as published by Moody's Investors Service, Inc. is no longer
11 appropriate for the determination of the reference interest rate, then
12 an alternative method for determination of the reference interest rate,
13 which is adopted by the National Association of Insurance Commissioners
14 and approved by rule adopted by the commissioner, may be substituted.

15 **Sec. 80.** RCW 48.74.040 and 1982 1st ex.s. c 9 s 4 are each amended
16 to read as follows:

17 (1) Except as otherwise provided in RCW 48.74.040(2) ~~((and))~~,
18 48.74.070, and section 83 of this act, reserves according to the
19 commissioner's reserve valuation method, for the life insurance and
20 endowment benefits of policies providing for a uniform amount of
21 insurance and requiring the payment of uniform premiums, shall be the
22 excess, if any, of the present value, at the date of valuation, of such
23 future guaranteed benefits provided for by such policies, over the then
24 present value of any future modified net premiums therefor. The
25 modified net premiums for any such policy shall be such uniform
26 percentage of the respective contract premiums for such benefits that
27 the present value, at the date of issue of the policy, of all such
28 modified net premiums shall be equal to the sum of the then present

1 value of such benefits provided for by the policy and the excess of (a)
2 over (b), as follows:

3 (a) A net level annual premium equal to the present value, at the
4 date of issue, of such benefits provided for after the first policy
5 year, divided by the present value, at the date of issue, of an annuity
6 of one per annum payable on the first and each subsequent anniversary
7 of such policy on which a premium falls due: PROVIDED HOWEVER, That
8 such net level annual premium shall not exceed the net level annual
9 premium on the nineteen year premium whole life plan for insurance of
10 the same amount at an age one year higher than the age at issue of such
11 policy.

12 (b) A net one year term premium for such benefits provided for in
13 the first policy year: PROVIDED, That for any life insurance policy
14 issued on or after January 1, 1986, for which the contract premium in
15 the first policy year exceeds that of the second year and for which no
16 comparable additional benefit is provided in the first year for such
17 excess and which provides an endowment benefit or a cash surrender
18 value or a combination thereof in an amount greater than such excess
19 premium, the reserve according to the commissioner's reserve valuation
20 method as of any policy anniversary occurring on or before the assumed
21 ending date defined herein as the first policy anniversary on which the
22 sum of any endowment benefit and any cash surrender value then
23 available is greater than such excess premium shall, except as
24 otherwise provided in RCW 48.74.070, be the greater of the reserve as
25 of such policy anniversary calculated as described in the preceding
26 paragraph of this subsection and the reserve as of such policy
27 anniversary calculated as described in that paragraph, but with: (i)
28 The value defined in subparagraph (a) of that paragraph being reduced
29 by fifteen percent of the amount of such excess first year premium;
30 (ii) all present values of benefits and premiums being determined

1 without reference to premiums or benefits provided for by the policy
2 after the assumed ending date; (iii) the policy being assumed to mature
3 on such date as an endowment; and (iv) the cash surrender value
4 provided on such date being considered as an endowment benefit. In
5 making the above comparison the mortality and interest bases stated in
6 RCW 48.74.030(1) and (3) shall be used.

7 Reserves according to the commissioner's reserve valuation method
8 for life insurance policies providing for a varying amount of insurance
9 or requiring the payment of varying premiums, group annuity and pure
10 endowment contracts purchased under a retirement plan or plan of
11 deferred compensation established or maintained by an employer,
12 including a partnership or sole proprietorship, or by an employee
13 organization, or by both, other than a plan providing individual
14 retirement accounts or individual retirement annuities under section
15 408 of the Internal Revenue Code, as now or hereafter amended,
16 disability and accidental death benefits in all policies and contracts,
17 and all other benefits, except life insurance and endowment benefits in
18 life insurance policies and benefits provided by all other annuity and
19 pure endowment contracts, shall be calculated by a method consistent
20 with the principles of the preceding paragraphs of this subsection.

21 (2) This section shall apply to all annuity and pure endowment
22 contracts other than group annuity and pure endowment contracts
23 purchased under a retirement plan or plan of deferred compensation,
24 established or maintained by an employer, including a partnership or
25 sole proprietorship, or by an employee organization, or by both, other
26 than a plan providing individual retirement accounts or individual
27 retirement annuities under section 408 of the Internal Revenue Code, as
28 now or hereafter amended.

29 Reserves according to the commissioner's annuity reserve method for
30 benefits under annuity or pure endowment contracts, excluding any

1 disability and accidental death benefits in such contracts, shall be
2 the greatest of the respective excesses of the present values, at the
3 date of valuation, of the future guaranteed benefits, including
4 guaranteed nonforfeiture benefits, provided for by such contracts at
5 the end of each respective contract year, over the present value, at
6 the date of valuation, of any future valuation considerations derived
7 from future gross considerations, required by the terms of such
8 contract, that become payable prior to the end of such respective
9 contract year. The future guaranteed benefits shall be determined by
10 using the mortality table, if any, and the interest rate, or rates,
11 specified in such contracts for determining guaranteed benefits. The
12 valuation considerations are the portions of the respective gross
13 considerations applied under the terms of such contracts to determine
14 nonforfeiture values.

15 **Sec. 81.** RCW 48.74.050 and 1982 1st ex.s. c 9 s 5 are each amended
16 to read as follows:

17 (1) In no event may a company's aggregate reserves for all life
18 insurance policies, excluding disability and accidental death benefits,
19 issued on or after July 10, 1982, be less than the aggregate reserves
20 calculated in accordance with the methods set forth in RCW 48.74.040,
21 48.74.070, and 48.74.080 and the mortality table or tables and rate or
22 rates of interest used in calculating nonforfeiture benefits for such
23 policies.

24 (2) In no event may the aggregate reserves for all policies,
25 contracts, and benefits be less than the aggregate reserves determined
26 by the qualified actuary to be necessary to render the opinion required
27 under section 78 of this act.

1 **Sec. 82.** RCW 48.74.060 and 1982 1st ex.s. c 9 s 6 are each amended
2 to read as follows:

3 Reserves for all policies and contracts issued prior to the
4 operative date of this chapter, may be calculated, at the option of the
5 company, according to any standards which produce greater aggregate
6 reserves for all such policies and contracts than the minimum reserves
7 required by the laws in effect immediately prior to such date.

8 Reserves for any category of policies, contracts, or benefits as
9 established by the commissioner, issued on or after July 10, 1982, may
10 be calculated, at the option of the company, according to any standards
11 which produce greater aggregate reserves for such category than those
12 calculated according to the minimum standard herein provided, but the
13 rate or rates of interest used for policies and contracts, other than
14 annuity and pure endowment contracts, shall not be higher than the
15 corresponding rate or rates of interest used in calculating any
16 nonforfeiture benefits provided therein.

17 Any such company which at any time has adopted any standard of
18 valuation producing greater aggregate reserves than those calculated
19 according to the minimum standard herein provided may, with the
20 approval of the commissioner, adopt any lower standard of valuation,
21 but not lower than the minimum herein provided. For the purposes of
22 this section, the holding of additional reserves previously determined
23 by a qualified actuary to be necessary to render the opinion required
24 under section 78 of this act is not to be the adoption of a higher
25 standard of valuation.

26 NEW SECTION. **Sec. 83.** A new section is added to chapter 48.74 RCW
27 to read as follows:

28 The commissioner shall adopt rules containing the minimum standards
29 applicable to the valuation of disability insurance.

1 **Sec. 84.** RCW 48.92.010 and 1987 c 306 s 1 are each amended to read
2 as follows:

3 The purpose of this chapter is to regulate the formation and
4 operation of risk retention groups and purchasing groups in this state
5 formed pursuant to the provisions of the federal Liability Risk
6 Retention Act of 1986.

7 **Sec. 85.** RCW 48.92.020 and 1987 c 306 s 2 are each amended to read
8 as follows:

9 As used in this chapter, the following terms have the meanings
10 indicated unless the context clearly requires otherwise:

11 (1) "Commissioner" means the insurance commissioner of Washington
12 state or the commissioner, director, or superintendent of insurance in
13 any other state.

14 (2) "Completed operations liability" means liability arising out of
15 the installation, maintenance, or repair of any product at a site which
16 is not owned or controlled by:

17 (a) Any person who performs that work; or

18 (b) Any person who hires an independent contractor to perform that
19 work; but shall include liability for activities which are completed or
20 abandoned before the date of the occurrence giving rise to the
21 liability.

22 (3) "Domicile," for purposes of determining the state in which a
23 purchasing group is domiciled, means:

24 (a) For a corporation, the state in which the purchasing group is
25 incorporated; and

26 (b) For an unincorporated entity, the state of its principal place
27 of business.

28 (4) "Hazardous financial condition" means that, based on its
29 present or reasonably anticipated financial condition, a risk retention

1 group, although not yet financially impaired or insolvent, is unlikely
2 to be able:

3 (a) To meet obligations to policyholders with respect to known
4 claims and reasonably anticipated claims; or

5 (b) To pay other obligations in the normal course of business.

6 (5) "Insurance" means primary insurance, excess insurance,
7 reinsurance, surplus lines insurance, and any other arrangement for
8 shifting and distributing risk which is determined to be insurance
9 under the laws of this state.

10 (6) "Liability" means legal liability for damages including costs
11 of defense, legal costs and fees, and other claims expenses because of
12 injuries to other persons, damage to their property, or other damage or
13 loss to such other persons resulting from or arising out of:

14 (a) Any business, whether profit or nonprofit, trade, product,
15 services, including professional services, premises, or operations; or

16 (b) Any activity of any state or local government, or any agency or
17 political subdivision thereof.

18 "Liability" does not include personal risk liability and an
19 employer's liability with respect to its employees other than legal
20 liability under the federal Employers' Liability Act 45 U.S.C. 51 et
21 seq.

22 (7) "Personal risk liability" means liability for damages because
23 of injury to any person, damage to property, or other loss or damage
24 resulting from any personal, familial, or household responsibilities or
25 activities, rather than from responsibilities or activities referred to
26 in subsection (6) of this section.

27 (8) "Plan of operation or a feasibility study" means an analysis
28 which presents the expected activities and results of a risk retention
29 group including, at a minimum:

1 (a) Information sufficient to verify that its members are engaged
2 in businesses or activities similar or related with respect to the
3 liability to which the members are exposed by virtue of any related,
4 similar, or common business, trade, product, services, premises, or
5 operations;

6 (b) For each state in which it intends to operate, the coverages,
7 deductibles, coverage limits, rates, and rating classification systems
8 for each line of insurance the group intends to offer;

9 ~~((b))~~ (c) Historical and expected loss experience of the proposed
10 members and national experience of similar exposures;

11 ~~((e))~~ (d) Pro forma financial statements and projections;

12 ~~((d))~~ (e) Appropriate opinions by a qualified, independent,
13 casualty actuary, including a determination of minimum premium or
14 participation levels required to commence operations and to prevent a
15 hazardous financial condition;

16 ~~((e))~~ (f) Identification of management, underwriting and claims
17 procedures, marketing methods, managerial oversight methods, ((and))
18 investment policies, and reinsurance agreements; ((and

19 (f)) (g) Identification of each state in which the risk retention
20 group has obtained, or sought to obtain, a charter and license, and a
21 description of its status in each of those states; and

22 (h) Such other matters as may be prescribed by the commissioner for
23 liability insurance companies authorized by the insurance laws of the
24 state.

25 (9) "Product liability" means liability for damages because of any
26 personal injury, death, emotional harm, consequential economic damage,
27 or property damage including damages resulting from the loss of use of
28 property arising out of the manufacture, design, importation,
29 distribution, packaging, labeling, lease, or sale of a product, but
30 does not include the liability of any person for those damages if the

1 product involved was in the possession of such a person when the
2 incident giving rise to the claim occurred.

3 (10) "Purchasing group" means any group which:

4 (a) Has as one of its purposes the purchase of liability insurance
5 on a group basis;

6 (b) Purchases the insurance only for its group members and only to
7 cover their similar or related liability exposure, as described in (c)
8 of this subsection;

9 (c) Is composed of members whose businesses or activities are
10 similar or related with respect to the liability to which members are
11 exposed by virtue of any related, similar, or common business, trade,
12 product, services, premises, or operations; and

13 (d) Is domiciled in any state.

14 (11) "Risk retention group" means any corporation or other limited
15 liability association (~~((formed under the laws of any state, Bermuda, or~~
16 ~~the Cayman Islands))~~):

17 (a) Whose primary activity consists of assuming and spreading all,
18 or any portion, of the liability exposure of its group members;

19 (b) Which is organized for the primary purpose of conducting the
20 activity described under (a) of this subsection;

21 (c) Which:

22 (i) Is chartered and licensed as a liability insurance company and
23 authorized to engage in the business of insurance under the laws of any
24 state; or

25 (ii) Before January 1, 1985, was chartered or licensed and
26 authorized to engage in the business of insurance under the laws of
27 Bermuda or the Cayman Islands and, before such date, had certified to
28 the insurance commissioner of at least one state that it satisfied the
29 capitalization requirements of such state, except that any such group
30 shall be considered to be a risk retention group only if it has been

1 engaged in business continuously since that date and only for the
2 purpose of continuing to provide insurance to cover product liability
3 or completed operations liability as the terms were defined in the
4 federal Product Liability Risk Retention Act of 1981 before the date of
5 the enactment of the federal Risk Retention Act of 1986;

6 (d) Which does not exclude any person from membership in the group
7 solely to provide for members of such a group a competitive advantage
8 over such a person;

9 (e) Which:

10 (i) Has as its ~~((members))~~ owners only persons who ~~((have an~~
11 ~~ownership interest in the group and which has as its owners only~~
12 ~~persons who are members))~~ comprise the membership of the risk retention
13 group and who are provided insurance by the risk retention group; or

14 (ii) Has as its sole ~~((member and sole))~~ owner an organization
15 ~~((which is owned by persons who are provided insurance by the risk~~
16 ~~retention group))~~ that has:

17 (A) As its members only persons who comprise the membership of the
18 risk retention group; and

19 (B) As its owners only persons who comprise the membership of the
20 risk retention group and who are provided insurance by the group;

21 (f) Whose members are engaged in businesses or activities similar
22 or related with respect to the liability of which such members are
23 exposed by virtue of any related, similar, or common business trade,
24 product, services, premises, or operations;

25 (g) Whose activities do not include the provision of insurance
26 other than:

27 (i) Liability insurance for assuming and spreading all or any
28 portion of the liability of its group members; and

29 (ii) Reinsurance with respect to the liability of any other risk
30 retention group or any members of such other group which is engaged in

1 businesses or activities so that the group or member meets the
2 requirement described in (f) of this subsection from membership in the
3 risk retention group which provides such reinsurance; and

4 (h) The name of which includes the phrase "risk retention group."

5 (12) "State" means any state of the United States or the District
6 of Columbia.

7 **Sec. 86.** RCW 48.92.030 and 1987 c 306 s 3 are each amended to read
8 as follows:

9 (1) A risk retention group seeking to be chartered in this state
10 must be chartered and licensed as a liability insurance company
11 authorized by the insurance laws of this state and, except as provided
12 elsewhere in this chapter, must comply with all of the laws, rules,
13 regulations, and requirements applicable to the insurers chartered and
14 licensed in this state and with RCW 48.92.040 to the extent the
15 requirements are not a limitation on laws, rules, regulations, or
16 requirements of this state.

17 (2) A risk retention group chartered in this state shall file with
18 the department and the national association of insurance commissioners
19 an annual statement in a form prescribed by the national association of
20 insurance commissioners and in diskette form, if required by the
21 commissioner and completed in accordance with its instructions and the
22 national association of insurance commissioners accounting practices
23 and procedures manual.

24 (3) Before it may offer insurance in any state, each risk retention
25 group shall also submit for approval to the insurance commissioner of
26 this state a plan of operation or a feasibility study (~~and revisions~~
27 ~~of the plan or study if the group intends to offer any additional lines~~
28 ~~of liability insurance)). The risk retention group shall submit an
29 appropriate revision in the event of a subsequent material change in an~~

1 item of the plan of operation or feasibility study, within ten days of
2 the change. The group may not offer any additional kinds of liability
3 insurance, in this state or in any other state, until a revision of the
4 plan or study is approved by the commissioner.

5 (4) At the time of filing its application for charter, the risk
6 retention group shall provide to the commissioner in summary form the
7 following information: The identity of the initial members of the
8 group; the identify of those individuals who organized the group or who
9 shall provide administrative services or otherwise influence or control
10 the activities of the group; the amount and nature of the initial
11 capitalization; the coverages to be afforded; and the states in which
12 the group intends to operate. Upon receipt of this information, the
13 commissioner shall forward the information to the national association
14 of insurance commissioners. Providing notification to the national
15 association of insurance commissioners is in addition to and is not
16 sufficient to satisfy the requirements of RCW 48.92.040 or this
17 chapter.

18 **Sec. 87.** RCW 48.92.040 and 1987 c 306 s 4 are each amended to read
19 as follows:

20 Risk retention groups chartered and licensed in states other than
21 this state and seeking to do business as a risk retention group in this
22 state (~~must observe and abide by~~) shall comply with the laws of this
23 state as follows:

24 (1) Before offering insurance in this state, a risk retention group
25 shall submit to the commissioner on a form prescribed by the national
26 association of insurance commissioners:

27 (a) A statement identifying the state or states in which the risk
28 retention group is chartered and licensed as a liability insurance
29 company, date of chartering, its principal place of business, and any

1 other information including information on its membership, as the
2 commissioner of this state may require to verify that the risk
3 retention group is qualified under RCW 48.92.020(11);

4 (b) A copy of its plan of operations or a feasibility study and
5 revisions of the plan or study submitted to its state of domicile:
6 PROVIDED, HOWEVER, That the provision relating to the submission of a
7 plan of operation or a feasibility study shall not apply with respect
8 to any line or classification of liability insurance which: (i) Was
9 defined in the federal Product Liability Risk Retention Act of 1981
10 before October 27, 1986; and (ii) was offered before that date by any
11 risk retention group which had been chartered and operating for not
12 less than three years before that date; (~~and~~)

13 (c) The risk retention group shall submit a copy of any revision to
14 its plan of operation or feasibility study required under RCW
15 48.92.030(3) at the same time that the revision is submitted to the
16 commissioner of its chartering state; and

17 (d) A statement of registration which designates the commissioner
18 as its agent for the purpose of receiving service of legal documents or
19 process.

20 (2) Any risk retention group doing business in this state shall
21 submit to the commissioner:

22 (a) A copy of the group's financial statement submitted to its
23 state of domicile, which shall be certified by an independent public
24 accountant and contain a statement of opinion on loss and loss
25 adjustment expense reserves made by a member of the American academy of
26 actuaries or a qualified loss reserve specialist under criteria
27 established by the national association of insurance commissioners;

28 (b) A copy of each examination of the risk retention group as
29 certified by the commissioner or public official conducting the
30 examination;

1 (c) Upon request by the commissioner, a copy of any information or
2 document pertaining to any outside audit performed with respect to the
3 risk retention group; and

4 (d) Any information as may be required to verify its continuing
5 qualification as a risk retention group under RCW 48.92.020(11).

6 (3)(a) (~~All premiums paid for coverages within this state to risk~~
7 ~~retention groups shall be subject to taxation at the same rate and~~
8 ~~subject to the same interest, fines, and penalties for nonpayment as~~
9 ~~that applicable to foreign admitted insurers)) A risk retention group
10 is liable for the payment of premium taxes and taxes on premiums of
11 direct business for risks resident or located within this state, and
12 shall report on or before March 1 of each year to the commissioner the
13 direct premiums written for risks resident or located within this
14 state. The risk retention group is subject to taxation, and applicable
15 fines and penalties related thereto, on the same basis as a foreign
16 admitted insurer.~~

17 (b) To the extent agents or brokers are utilized under RCW
18 48.92.120, they shall report (~~and pay the taxes for the premiums for~~
19 ~~risks which they~~) to the commissioner the premiums for direct business
20 for risks resident or located within this state which the licensees
21 have placed with or on behalf of a risk retention group not chartered
22 in this state.

23 (c) To the extent agents or brokers are (~~not~~) utilized (~~or fail~~
24 ~~to pay the tax, each risk retention group shall pay the tax for risks~~
25 ~~insured within the state. Each risk retention group shall report all~~
26 ~~premiums paid to it for risks insured within the state)) under RCW
27 48.92.120, an agent or broker shall keep a complete and separate record
28 of all policies procured from each risk retention group. The record is
29 open to examination by the commissioner, as provided in chapter 48.03~~

1 RCW. These records shall include, for each policy and each kind of
2 insurance provided thereunder, the following:

3 (i) The limit of liability;

4 (ii) The time period covered;

5 (iii) The effective date;

6 (iv) The name of the risk retention group which issued the policy;

7 (v) The gross premium charged; and

8 (vi) The amount of return premiums, if any.

9 (4) Any risk retention group, its agents and representatives, shall
10 be subject to any and all unfair claims settlement practices statutes
11 and regulations specifically denominated by the commissioner as unfair
12 claims settlement practices regulations.

13 (5) Any risk retention group, its agents and representatives, shall
14 be subject to the provisions of chapter 48.30 RCW pertaining to
15 deceptive, false, or fraudulent acts or practices. However, if the
16 commissioner seeks an injunction regarding such conduct, the injunction
17 must be obtained from a court of competent jurisdiction.

18 (6) Any risk retention group must submit to an examination by the
19 commissioner to determine its financial condition if the commissioner
20 of the jurisdiction in which the group is chartered has not initiated
21 an examination or does not initiate an examination within sixty days
22 after a request by the commissioner of this state. The examination
23 shall be coordinated to avoid unjustified repetition and conducted in
24 an expeditious manner and in accordance with the national association
25 of insurance commissioners' examiner handbook.

26 (7) ~~((Any))~~ Every application form for insurance from a risk
27 retention group and every policy issued by a risk retention group shall
28 contain in ten-point type on the front page and the declaration page,
29 the following notice:

1 **Sec. 88.** RCW 48.92.050 and 1987 c 306 s 5 are each amended to read
2 as follows:

3 (1) No risk retention group shall be permitted to join or
4 contribute financially to any insurance insolvency guaranty fund, or
5 similar mechanism, in this state, nor shall any risk retention group,
6 or its insureds or claimants against its insureds, receive any benefit
7 from any such fund for claims arising (~~((out of the operations of the))~~)
8 under the insurance policies issued by a risk retention group.

9 (2) A risk retention group shall participate in this state's joint
10 underwriting associations and mandatory liability pools or plans
11 required by the commissioners.

12 (3) When a purchasing group obtains insurance covering its members'
13 risks from an insurer not authorized in this state or a risk retention
14 group, no such risks, wherever resident or located, are covered by any
15 insurance guaranty fund or similar mechanism in this state.

16 (4) When a purchasing group obtains insurance covering its members'
17 risks from an authorized insurer, only risks resident or located in
18 this state shall be covered by the state guaranty fund established in
19 chapter 48.32 RCW.

20 **Sec. 89.** RCW 48.92.070 and 1987 c 306 s 7 are each amended to read
21 as follows:

22 ~~((Any purchasing group meeting the criteria established under the~~
23 ~~provisions of the federal Liability Risk Retention Act of 1986 shall be~~
24 ~~exempt from any law of this state relating to the creation of groups~~
25 ~~for the purchase of insurance, prohibition of group purchasing, or any~~
26 ~~law that would discriminate against a purchasing group or its members.~~
27 ~~In addition, an insurer shall be exempt from any law of this state~~
28 ~~which prohibits providing, or offering to provide, to a purchasing~~
29 ~~group or its members advantages based on their loss and expense~~

1 ~~experience not afforded to other persons with respect to rates, policy~~
2 ~~forms, coverages, or other matters. A purchasing group shall be~~
3 ~~subject to all other applicable laws of this state.))~~ A purchasing
4 group and its insurer or insurers are subject to all applicable laws of
5 this state, except that a purchasing group and its insurer or insurers
6 are exempt, in regard to liability insurance for the purchasing group,
7 from any law that:

8 (1) Prohibits the establishment of a purchasing group;

9 (2) Makes it unlawful for an insurer to provide or offer to provide
10 insurance on a basis providing, to a purchasing group or its members,
11 advantages based on their loss and expense experience not afforded to
12 other persons with respect to rates, policy forms, coverages, or other
13 matters;

14 (3) Prohibits a purchasing group or its members from purchasing
15 insurance on a group basis described in subsection (2) of this section;

16 (4) Prohibits a purchasing group from obtaining insurance on a
17 group basis because the group has not been in existence for a minimum
18 period of time or because any member has not belonged to the group for
19 a minimum period of time;

20 (5) Requires that a purchasing group must have a minimum number of
21 members, common ownership or affiliation, or certain legal form;

22 (6) Requires that a certain percentage of a purchasing group must
23 obtain insurance on a group basis;

24 (7) Otherwise discriminates against a purchasing group or any of
25 its members.

26 **Sec. 90.** RCW 48.92.080 and 1987 c 306 s 8 are each amended to read
27 as follows:

28 (1) A purchasing group which intends to do business in this state
29 shall furnish, prior to doing business, notice to the commissioner, on

1 forms prescribed by the national association of insurance commissioners
2 which shall:

3 (a) Identify the state in which the group is domiciled;

4 (b) Identify all other states in which the group intends to do
5 business;

6 (c) Specify the lines and classifications of liability insurance
7 which the purchasing group intends to purchase;

8 ~~((e))~~ (d) Identify the insurance company or companies from which
9 the group intends to purchase its insurance and the domicile of that
10 company or companies;

11 ~~((d))~~ (e) Specify the method by which, and the person or persons,
12 if any, through whom insurance will be offered to its members whose
13 risks are resident or located in this state;

14 (f) Identify the principal place of business of the group; and

15 ~~((e))~~ (g) Provide any other information as may be required by the
16 commissioner to verify that the purchasing group is qualified under RCW
17 48.92.020(10).

18 (2) A purchasing group shall, within ten days, notify the
19 commissioner of any changes in any of the items set forth in subsection
20 (1) of this section.

21 (3) The purchasing group shall register with and designate the
22 commissioner as its agent solely for the purpose of receiving service
23 of legal documents or process, except that this requirement shall not
24 apply in the case of a purchasing group which only purchases insurance
25 that was authorized under the federal Product Liability Risk Retention
26 Act of 1981 and:

27 (a) Which in any state of the United States:

28 (i) Was domiciled before April ~~((2))~~ 1, 1986; and

29 (ii) Is domiciled on and after October 27, 1986~~((, in any state of~~
30 ~~the United States))~~);

1 (b) Which:

2 (i) Before October 27, 1986, purchased insurance from an insurance
3 carrier licensed in any state;

4 (ii) Since October 27, 1986, purchased its insurance from an
5 insurance carrier licensed in any state; or

6 (c) Which was a purchasing group under the requirements of the
7 federal Product Liability Risk Retention Act of 1981 before October 27,
8 1986(~~;~~ and

9 ~~(d) Which does not purchase insurance that was not authorized for~~
10 ~~purposes of an exemption under that act, as in effect before October~~
11 ~~27, 1986)).~~

12 (4) A purchasing group that is required to give notice under
13 subsection (1) of this section shall also furnish such information as
14 may be required by the commissioner to:

15 (a) Verify that the entity qualifies as a purchasing group;

16 (b) Determine where the purchasing group is located; and

17 (c) Determine appropriate tax treatment.

18 **Sec. 91.** RCW 48.92.090 and 1987 c 306 s 9 are each amended to read
19 as follows:

20 (1) A purchasing group may not purchase insurance from a risk
21 retention group that is not chartered in a state or from an insurer not
22 admitted in the state in which the purchasing group is located, unless
23 the purchase is effected through a licensed agent or broker acting
24 pursuant to the surplus lines laws and regulations of that state.

25 (2) A purchasing group which obtains liability insurance from an
26 insurer not admitted in this state or a risk retention group shall
27 inform each of the members of the group which have a risk resident or
28 located in this state that the risk is not protected by an insurance
29 insolvency guaranty fund in this state, and that the risk retention

1 group or insurer may not be subject to all insurance laws and
2 regulations of this state.

3 (3) No purchasing group may purchase insurance providing for a
4 deductible or self-insured retention applicable to the group as a
5 whole; however, coverage may provide for a deductible or self-insured
6 retention applicable to individual members.

7 (4) Purchases of insurance by purchasing groups are subject to the
8 same standards regarding aggregate limits which are applicable to all
9 purchases of group insurance.

10 NEW SECTION. Sec. 92. A new section is added to chapter 48.92 RCW
11 to read as follows:

12 Premium taxes and taxes on premiums paid for coverage of risks
13 resident or located in this state by a purchasing group or any members
14 of the purchasing groups shall be:

15 (1) Imposed at the same rate and subject to the same interest,
16 fines, and penalties as that applicable to premium taxes and taxes on
17 premiums paid for similar coverage from authorized insurers, as defined
18 under chapter 48.05 RCW, or unauthorized insurers, as defined and
19 provided for under chapter 48.15 RCW, by other insurers; and

20 (2) Paid first by the insurance source as defined in subsection (1)
21 of this section, and if not by the source by the purchasing group, and
22 if not by the purchasing group then by the agent or broker for the
23 purchasing group, and if not by the agent or broker for the purchasing
24 group, then by each of the purchasing group's members.

25 **Sec. 93.** RCW 48.92.100 and 1987 c 306 s 10 are each amended to
26 read as follows:

27 The commissioner is authorized to make use of any of the powers
28 established under Title 48 RCW to enforce the laws of this state so

1 long as those powers are not specifically preempted by the federal
2 Product Liability Risk Retention Act of 1981, as amended by the federal
3 Risk Retention Amendments of 1986. This includes, but is not limited
4 to, the commissioner's administrative authority to investigate, issue
5 subpoenas, conduct depositions and hearings, issue orders, and impose
6 penalties and seek injunctive relief. With regard to any
7 investigation, administrative proceedings, or litigation, the
8 commissioner can rely on the procedural law and regulations of the
9 state. The injunctive authority of the commissioner in regard to risk
10 retention groups is restricted by the requirement that any injunction
11 be issued by a court of competent jurisdiction.

12 **Sec. 94.** RCW 48.92.120 and 1987 c 306 s 12 are each amended to
13 read as follows:

14 ~~((Any person acting, or offering to act, as an agent or broker for
15 a risk retention group or purchasing group, which solicits members,
16 sells insurance coverage, purchases coverage for its members located
17 within the state or otherwise does business in this state shall be
18 subject to the provisions of chapter 48.17 RCW and before commencing
19 any such activity, obtain a license and pay the fees designated for the
20 license under RCW 48.14.010.))~~ (1) No person may act or aid in any
21 manner in soliciting, negotiating, or procuring liability insurance in
22 this state from a risk retention group unless the person is licensed as
23 an insurance agent or broker for casualty insurance in accordance with
24 chapter 48.17 RCW and pays the fees designated for the license under
25 RCW 48.14.010.

26 (2)(a) No person may act or aid in any manner in soliciting,
27 negotiating, or procuring liability insurance in this state for a
28 purchasing group from an authorized insurer or a risk retention group
29 chartered in a state unless the person is licensed as an insurance

1 agent or broker for casualty insurance in accordance with chapter 48.17
2 RCW and pays the fees designated for the license under RCW 48.14.010.

3 (b) No person may act or aid in any manner in soliciting,
4 negotiating, or procuring liability insurance coverage in this state
5 for a member of a purchasing group under a purchasing group's policy
6 unless the person is licensed as an insurance agent or broker for
7 casualty insurance in accordance with chapter 48.17 RCW and pays the
8 fees designated for the license under RCW 48.14.010.

9 (c) No person may act or aid in any manner in soliciting,
10 negotiating, or procuring liability insurance from an insurer not
11 authorized to do business in this state on behalf of a purchasing group
12 located in this state unless the person is licensed as a surplus lines
13 broker in accordance with chapter 48.15 RCW and pays the fees
14 designated for the license under RCW 48.14.010.

15 (3) For purposes of acting as an agent or broker for a risk
16 retention group or purchasing group under subsections (1) and (2) of
17 this section, the requirement of residence in this state does not
18 apply.

19 (4) Every person licensed under the provisions of chapters 48.15
20 and 48.17 RCW, on business placed with risk retention groups or written
21 through a purchasing group, shall inform each prospective insured of
22 the provisions of the notice required under RCW 48.92.040(7) in the
23 case of a risk retention group and RCW 48.92.090(3) in the case of a
24 purchasing group.

25 **Sec. 95.** RCW 48.92.130 and 1987 c 306 s 13 are each amended to
26 read as follows:

27 An order issued by any district court of the United States
28 enjoining a risk retention group from soliciting or selling insurance,
29 or operating, in any state or in all states or in any territory or

1 possession of the United States, upon a finding that the group is in a
2 hazardous financial or financially impaired condition, shall be
3 enforceable in the courts of the state.

4 **Sec. 96.** RCW 48.92.140 and 1987 c 306 s 14 are each amended to
5 read as follows:

6 The commissioner may establish and from time to time amend the
7 rules relating to risk retention or risk purchasing groups as may be
8 necessary or desirable to carry out the provisions of this chapter.

9 NEW SECTION. **Sec. 97.** The following acts or parts of acts are
10 each repealed:

11 (1) RCW 48.07.090 and 1975 1st ex.s. c 266 s 4, 1953 c 197 s 3, &
12 1947 c 79 s .07.09;

13 (2) RCW 48.31A.005 and 1983 c 46 s 1;

14 (3) RCW 48.31A.010 and 1971 ex.s. c 13 s 3;

15 (4) RCW 48.31A.020 and 1985 c 55 s 1, 1983 c 46 s 2, & 1971 ex.s.
16 c 13 s 4;

17 (5) RCW 48.31A.030 and 1983 c 46 s 3, & 1971 ex.s. c 13 s 5;

18 (6) RCW 48.31A.040 and 1971 ex.s. c 13 s 6;

19 (7) RCW 48.31A.050 and 1985 c 55 s 2, 1983 c 46 s 4, & 1971 ex.s.
20 c 13 s 7;

21 (8) RCW 48.31A.055 and 1985 c 55 s 3;

22 (9) RCW 48.31A.060 and 1971 ex.s. c 13 s 8;

23 (10) RCW 48.31A.070 and 1971 ex.s. c 13 s 9;

24 (11) RCW 48.31A.080 and 1971 ex.s. c 13 s 10;

25 (12) RCW 48.31A.090 and 1971 ex.s. c 13 s 11;

26 (13) RCW 48.31A.100 and 1971 ex.s. c 13 s 12;

27 (14) RCW 48.31A.110 and 1971 ex.s. c 13 s 13;

28 (15) RCW 48.31A.120 and 1971 ex.s. c 13 s 14;

1 (16) RCW 48.31A.130 and 1971 ex.s. c 13 s 15; and

2 (17) RCW 48.31A.900 and 1971 ex.s. c 13 s 17.

3 NEW SECTION. **Sec. 98.** The insurance commissioner may take such
4 steps as are necessary to ensure that this act is implemented on its
5 effective date.

6 NEW SECTION. **Sec. 99.** Sections 1 through 14 of this act shall
7 constitute a new chapter in Title 48 RCW.

8 NEW SECTION. **Sec. 100.** Sections 15 through 20 of this act shall
9 constitute a new chapter in Title 48 RCW.

10 NEW SECTION. **Sec. 101.** Sections 21 through 32 of this act shall
11 constitute a new chapter in Title 48 RCW.

12 NEW SECTION. **Sec. 102.** Sections 33 through 41 of this act shall
13 constitute a new chapter in Title 48 RCW.

14 NEW SECTION. **Sec. 103.** Sections 55 through 71 of this act are
15 each added to chapter 48.31 RCW.

16 NEW SECTION. **Sec. 104.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.