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HOUSE BILL 2370

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State of Washington

53rd Legislature

1994 Regular Session

By Representatives Zellinsky and Dyer

Read first time 01/14/94. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to reinsurance and surplus lines of insurance  
2 involving incorporated entities; and amending RCW 48.12.160 and  
3 48.15.090.

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

5 **Sec. 1.** RCW 48.12.160 and 1993 c 91 s 2 are each amended to read  
6 as follows:

7 (1) Any insurance company organized under the laws of this state  
8 may take credit as an asset or as a deduction from loss or claim,  
9 unearned premium, or life policy or contract reserves on risks ceded to  
10 a reinsurer to the extent reinsured by an insurer or insurers holding  
11 a certificate of authority to transact that kind of business in this  
12 state. The credit on ceded risks reinsured by any insurer which is not  
13 authorized to transact business in this state may be taken:

14 (a) Where the reinsurer is a group ((of)) including incorporated  
15 and unincorporated underwriters, and the group maintains a trust fund  
16 in a United States bank that is determined by the national association  
17 of insurance commissioners to meet credit standards for issuing letters  
18 of credit in connection with reinsurance, which trust fund must be in  
19 an amount equal to the group's liabilities attributable to business

1 written in the United States, and in addition, the group shall maintain  
2 a trustee surplus of which one hundred million dollars shall be held  
3 jointly and exclusively for the benefit of United States ceding  
4 insurers of any member of the group; the incorporated members of the  
5 group shall not be engaged in any business other than underwriting as  
6 a member of the group and shall be subject to the same level of  
7 solvency regulation and control by the group's domiciliary regulator as  
8 are the unincorporated members; and the group shall make available to  
9 the commissioner an annual certification of the solvency of each  
10 underwriter by the group's domiciliary regulator and its independent  
11 public accountants; or

12 (b) In an amount not exceeding:

13 (i) The amount of deposits by and funds withheld from the assuming  
14 insurer pursuant to express provision therefor in the reinsurance  
15 contract, as security for the payment of the obligations thereunder, if  
16 the deposits or funds are assets of the types and amounts that are  
17 authorized under chapter 48.13 RCW and are held subject to withdrawal  
18 by and under the control of the ceding insurer or if the deposits or  
19 funds are placed in trust for these purposes in a bank which is a  
20 member of the federal reserve system and withdrawals from the trust  
21 cannot be made without the consent of the ceding company; or

22 (ii) The amount of a clean, irrevocable, and unconditional letter  
23 of credit issued by a United States bank that is determined by the  
24 national association of insurance commissioners to meet credit  
25 standards for issuing letters of credit in connection with reinsurance,  
26 and issued for a term of at least one year with provisions that it must  
27 be renewed unless the bank gives notice of nonrenewal at least thirty  
28 days before the expiration issued under arrangements satisfactory to  
29 the commissioner of insurance as constituting security to the ceding  
30 insurer substantially equal to that of a deposit under (b)(i) of this  
31 subsection.

32 (2) Any reinsurance ceded by a company organized under the laws of  
33 this state or ceded by any company not organized under the laws of this  
34 state and transacting business in this state must be payable by the  
35 assuming insurer on the basis of liability of the ceding company under  
36 the contract or contracts reinsured without diminution because of the  
37 insolvency of the ceding company, and any such reinsurance agreement  
38 which may be canceled on less than ninety days notice must provide for  
39 a run-off of the reinsurance in force at the date of cancellation.

1 (3) A reinsurance agreement may provide that the liquidator or  
2 receiver or statutory successor of an insolvent ceding insurer shall  
3 give written notice of the pendency of a claim against the insolvent  
4 ceding insurer on the policy or bond reinsured within a reasonable time  
5 after such claim is filed in the insolvency proceeding and that during  
6 the pendency of such claim any assuming insurer may investigate such  
7 claim and interpose, at its own expense, in the proceeding where such  
8 claim is to be adjudicated, any defense or defenses which it may deem  
9 available to the ceding insurer or its liquidator or receiver or  
10 statutory successor.

11 The expense thus incurred by the assuming insurer shall be  
12 chargeable subject to court approval against the insolvent ceding  
13 insurer as a part of the expense of liquidation to the extent of a  
14 proportionate share of the benefit which may accrue to the ceding  
15 insurer solely as a result of the defense undertaken by the assuming  
16 insurer.

17 (4) Where two or more assuming insurers are involved in the same  
18 claim and a majority in interest elect to interpose to such claim, the  
19 expense shall be apportioned in accordance with the terms of the  
20 reinsurance agreement as though such expense had been incurred by the  
21 ceding insurer.

22 **Sec. 2.** RCW 48.15.090 and 1991 sp.s. c 5 s 2 are each amended to  
23 read as follows:

24 (1) A surplus line broker shall not knowingly place surplus line  
25 insurance with insurers unsound financially. The surplus line broker  
26 shall ascertain the financial condition of the unauthorized insurer,  
27 and maintain written evidence thereof, before placing insurance  
28 therewith. The surplus line broker shall not so insure with:

29 (a) Any foreign insurer having less than six million dollars of  
30 capital and surplus or substantially equivalent capital funds, of which  
31 not less than one million five hundred thousand dollars is capital; or

32 (b) Any alien insurer having less than six million dollars of  
33 capital and surplus or substantially equivalent capital funds. By  
34 January 1, 1992, this requirement shall be increased to twelve million  
35 five hundred thousand dollars. By January 1, 1993, this requirement  
36 shall be further increased to fifteen million dollars. Such alien  
37 insurers must have in force in the United States an irrevocable trust  
38 account, in a qualified United States financial institution, on behalf

1 of United States policyholders of not less than two million five  
2 hundred thousand dollars and consisting of cash, securities, letters of  
3 credit, or of investments of substantially the same character and  
4 quality as those which are eligible investments for the capital and  
5 statutory reserves of admitted insurers authorized to write like kinds  
6 of insurance in this state. There must be on file with the  
7 commissioner a copy of the trust, certified by the trustee, evidencing  
8 a subsisting trust deposit having an expiration date which at no time  
9 shall be less than five years after the date of creation of the trust.  
10 Such trust fund shall be included in the calculation of the insurer's  
11 capital and surplus or its equivalents; or

12 (c) Any (~~unincorporated~~) group (~~of~~) including incorporated and  
13 individual insurers maintaining a trust fund of less than fifty million  
14 dollars as security to the full amount thereof for all policyholders in  
15 the United States of each member of the group, (~~and~~) or unless such  
16 trust shall (~~likewise~~) comply with the terms and conditions  
17 established in (b) of this subsection for an alien insurer; or

18 (d) Any insurance exchange created by the laws of an individual  
19 state, maintaining capital and surplus, or substantially equivalent  
20 capital funds of less than fifty million dollars in the aggregate. For  
21 insurance exchanges which maintain funds for the protection of all  
22 insurance exchange policyholders, each individual syndicate shall  
23 maintain minimum capital and surplus, or the substantial equivalent  
24 thereof, of not less than six million dollars. In the event the  
25 insurance exchange does not maintain funds for the protection of all  
26 insurance exchange policyholders, each individual syndicate shall meet  
27 the minimum capital and surplus requirements of (a) of this subsection.

28 (2) The commissioner may, by rule:

29 (a) Increase the financial requirements under subsection (1) of  
30 this section by not more than one million dollars in any twelve-month  
31 period, but in no case may the requirements exceed fifteen million  
32 dollars; or

33 (b) Prescribe the terms under which the foregoing financial  
34 requirements may be waived in circumstances where insurance cannot be  
35 otherwise procured on risks located in this state.

36 (3) For any violation of this section the surplus line broker may  
37 be fined not less than one hundred dollars or more than five thousand

1 dollars, and in addition to or in lieu thereof the surplus line  
2 broker's license may be revoked, suspended, or nonrenewed.

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