

HOUSE BILL REPORT

HB 2728

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to insurance.

Brief Description: Regulating insurance.

Sponsors: Representatives Simpson, D., Benson and Schual-Berke; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/4/04, 2/6/04 [DPS].

Brief Summary of Substitute Bill

- Increases capital and surplus requirements for title insurers.
- Changes reserve requirements for title insurers.
- Makes various technical and minor-substantive changes to various provisions of the insurance code.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; G. Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Roach, Santos and D. Simpson.

Staff: Carrie Tellefson (786-7127).

Background:

The Insurance Commissioner (Commissioner) is authorized to regulate all insurance business in Washington, including certification of various types of insurers, approval of rate and form contracts, licensing of agents and brokers, collection of premium taxes, and responding to consumer complaints.

Title Insurance Reserve Requirements:

Title insurers must receive a certificate of authority from the Commissioner. In order to receive a certificate of authority, a title insurer must deposit with the Commissioner a guaranty fund. The amount required to be deposited is based on the size of the county in which the insurer is authorized to transact business, ranging from \$10,000 for a county population of less than 15,000 to \$200,000 for a county population over 500,000.

Title insurers are required to keep a reserve fund in an amount determined by applying the rate of 25 cents for each \$1,000 of net increase of insurance it has in force at the end of the year. This must continue or resume as needed to maintain the special reserve fund at an amount equal to not less than the required guaranty fund deposit. The reserve fund shall be held by the insurer as an additional guaranty fund, and shall be used only for the payment of losses after the insurer's liquid resources have been exhausted.

Insurer Anti-Fraud Plans:

An insurer must file an anti-fraud plan, which must establish specific procedures to prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud; review claims in order to detect evidence of possible insurance fraud and to investigate claims; report fraud to appropriate law enforcement agencies and cooperate in the prosecution of fraud cases; pursue civil actions against persons who have engaged in fraudulent activities; train company employees and agents in the detection and prevention of fraud. Each insurer must provide annually a summary report on actions taken under its anti-fraud plan to prevent and combat insurance fraud. The report must also include measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combating fraud, and the amount of fraud identified and recovered during the reporting period. The anti-fraud plans and summary of the insurer's anti-fraud activities are not public records and are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. An insurer that fails to follow the anti-fraud plan is subject to a civil penalty of up to \$10,000 for each violation.

Managing general agent

A managing general agent is a person who manages all or part of the business of an insurer, including managing a separate division or underwriting office, acts as a representative of the insurer, and who affiliates, produces, and underwrites an amount of written premium equal to or more than 5 percent of the policyholder surplus and who also adjusts or pays claims in excess of a certain amount, or negotiates reinsurance on behalf of the insurer. An insurer's employee may not be a managing general agent. A managing general agent must be licensed by the Commissioner, designated as a managing general agent, and appointed by the insurer.

Summary of Substitute Bill:

Several changes are made to the insurance code. Many of these changes are technical and some are substantive.

Title Insurance:

- The definition of title insurance is clarified throughout the code to reflect that it is insurance for owners of "real" property.
- The minimum capital and surplus requirements for title insurers is established at \$2 million for basic surplus and \$2 million for additional surplus.
- Title insurers must maintain reserves sufficient to cover all known and unknown liabilities, including the following: a known claim reserve in an amount sufficient to cover all unpaid losses, claims, and loss adjustment expenses arising from title policies; a statutory or unearned premium reserve consisting of:
 - The amount of the special reserve fund required prior to the effective date of this act, which must be released on certain conditions.
 - Additions to the reserve after the effective date of this act must be made out of total charges for title insurance policies and guarantees written, equal to the sum of:
 - 15 cents per \$1,000 of net retained liability for policies under \$500,000; and
 - 10 cents per \$1,000 of net retained liability for policies of \$500,000 or more.
 - The aggregate of the amounts set aside in this reserve must be released from the reserve and restored to net profits over a period of 20 years, by following a specific formula.
 - The insurer must calculate an adjusted statutory unearned premium reserve as of the effective date of this section. The adjusted statutory unearned premium reserve must be released from the reserve and restored to net profits over a period not to exceed 10 years.
 - A supplemental reserve is established as necessary to cover the company's liabilities with respect to all losses, claims, and loss adjustment expenses. The supplemental reserve will be phased in through December 31, 2008.
- Domestic title insurers must keep invested funds in an amount not less than the reserve requirements specified above.

Commissioner may publish and sell insurance laws and rules:

Clarifies that the Insurance Commissioner may publish the annual books of the insurance-related Washington Administrative Codes (WAC) and technical assistance advisories (TAA) in addition to the Revised Code of Washington (RCW) and may sell these books and documents at a reasonable price that is not less than the cost of publication and distribution. These funds may be deposited into the Commissioner's regulatory account.

Garnishment of benefits paid on annuity contracts:

With respect to annuity benefits, increases the amount that is exempt from wage

garnishment from \$250 to \$2,500.

Group life insurance - limitation on family member benefit lifted:

Removes the limitation in a group life insurance contract that an employee may purchase a life insurance policy on a spouse or child in an amount not to exceed 50 percent of the insurance on the life of the employee.

Anti-fraud plans:

Exempts insurers with gross written premiums of less than \$1,000 per year from filing an anti-fraud plan. Provides that the annual summary report must be filed by March 31 of each year.

Health Insurance Portability and Accountability Act (HIPAA) - changes and additions to ensure consistency with HIPAA:

- *Defines "creditable coverage" consistent with HIPAA.* Creditable coverage means coverage provided under the following health plans: group health plan, health insurance coverage, Medicare, Medicaid, Champus, medical plan of an Indian health service or tribal organization, a state health benefits risk pool, a federal employee health benefit program, a public health plan, and a health benefit plan of the Peace Corp. Creditable coverage does not include the following:
 - Coverage only for accident or disability income insurance; coverage issued as a supplement to liability insurance; liability insurance, including general and auto, workers compensation, automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, and other similar insurance specified in federal regulations, under which benefits are secondary or incidental to other insurance benefits.
 - If benefits are provided under a separate policy or are not integral to the underlying plan: limited scope dental or vision, benefits for long-term care, nursing home care, home health care, community-based care, or other similar limited benefits as specified in federal law.
 - If independent, non-coordinated benefits: coverage for a specific disease or illness and hospital indemnity or other fixed indemnify insurance.
 - If offered as a separate policy: Medicare supplement and similar supplemental coverage provided under a group health plan.
- An insurer cannot deny or put conditions on any medicare supplement policy, discriminate in the pricing of the policy because of the health status, claims experience, receipt of health care, or medical condition of an applicant who applies for a policy prior to, or within six months before, the applicant turns 65 years old and is enrolled in Medicare part B. Each policy currently available from an insurer must be made available to all applicants who qualify under these terms without regard to age.
- If an applicant qualifies, submits an application, and has had continuous creditable coverage of at least six months, the insurer may not exclude benefits based on a preexisting condition.

- If an applicant qualifies, submits an application, and has had a continuous creditable coverage less than six months, the issuer must reduce the period of any preexisting condition exclusion by the amount of the period of creditable coverage as of the enrollment date.
- At the request of the Center For Medicare and Medicaid Services (CMS), clarifies when an enrollment with certain programs is involuntarily terminated and the individual enrolls with another organization or provider, the latter enrollment is considered an initial enrollment.

Managing general agents:

Clarifies that a managing general agent must hold funds collected for an insurer in a fiduciary capacity in an FDIC insured financial institution.

Various technical changes to correct and repeal outdated statutory references.

Substitute Bill Compared to Original Bill:

Clarifies that the funds from publishing and selling the annual books of the insurance-related WACs, TAAs, and the RCWs may be deposited into the Commissioner's regulatory account.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: These are primarily technical changes, with some minor substantive changes, to clarify the insurance code. The OIC has been keeping a list of updates that need to occur. These will keep the code clean and update some laws that were enacted several decades ago. For example, in group life insurance policies, the language limiting an employee from purchasing life insurance on a spouse or child to 50 percent of the value of their own policy was enacted in 1947. At that time, most families had one bread winner, so it was not necessary to have full value of life insurance on the spouse. Today, that has changed and, in many cases, both incomes are necessary. It makes more sense, then, to allow an employee to purchase a life insurance policy on their spouse that is the same as they purchase on themselves.

The OIC originally distributed this bill in October for comment and have received very few comments from the insurance industry.

Testimony Against: None.

Persons Testifying: Representative D. Simpson, prime sponsor; and Bill Daley and Ruth Ammons, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.