
SUBSTITUTE HOUSE BILL 2728

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives D. Simpson, Benson and Schual-Berke; by request of Insurance Commissioner)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to insurance; amending RCW 48.02.180, 48.05.340,
2 48.11.100, 48.11.140, 48.18.430, 48.21.047, 48.23.010, 48.24.030,
3 48.29.010, 48.29.020, 48.29.120, 48.29.130, 48.29.170, 48.30.300,
4 48.30A.045, 48.30A.060, 48.30A.065, 48.31.100, 48.38.030, 48.44.240,
5 48.66.020, 48.66.055, 48.92.120, and 48.98.015; adding a new section to
6 chapter 48.66 RCW; and repealing RCW 48.05.360, 48.29.030, 48.29.060,
7 48.29.070, 48.29.090, 48.29.100, 48.29.110, and 48.34.910.

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

9 **Sec. 1.** RCW 48.02.180 and 1981 c 339 s 1 are each amended to read
10 as follows:

11 (1) ~~((In addition to such publications as are otherwise authorized~~
12 ~~under this code,))~~ The commissioner may ((from time to time))
13 periodically prepare and publish:

14 (a) ~~((Booklets containing the insurance code, or supplements~~
15 ~~thereto, and such related statutes as the commissioner deems suitable~~
16 ~~and useful for inclusion in an appendix of such booklet or~~
17 ~~supplement.))~~ Title 48 RCW, Title 284 WAC, insurance bulletins and
18 technical assistance advisories, and other laws or regulations relevant
19 to the regulation of insurance;

1 (b) Manuals and other material (~~((relative))~~) relating to
2 examinations for (~~((licensing as provided in chapter 48.17 RCW))~~)
3 licensure; and

4 (c) Any other publications authorized under Title 48 RCW.

5 (2) The commissioner may (~~((furnish))~~) provide copies of the
6 (~~((insurance code, supplements thereto, and related statutes))~~)
7 publications referred to in subsection (1)(a) of this section free of
8 charge to:

9 (a) Public offices and officers in this state (~~((concerned~~
10 ~~therewith, to))~~);

11 (b) Public officials of other states and jurisdictions (~~((having~~
12 ~~supervision of))~~) that regulate insurance(~~((, to))~~);

13 (c) The library of congress(~~((,))~~); and (~~((to))~~)

14 (d) Officers of the armed forces of the United States of America
15 located at military installations in this state who are concerned with
16 insurance transactions at or involving (~~((such))~~) the military
17 installations.

18 (3) Except as provided in subsection (2) of this section, the
19 commissioner shall sell (~~((copies of the insurance code, supplements~~
20 ~~thereto, examination manuals, and materials as))~~) the publications
21 referred to in subsection (1) of this section(~~((, at))~~). The
22 commissioner may charge a reasonable price(~~((, fixed by the~~
23 ~~commissioner, in amount))~~) that is not less than the cost of
24 publication, handling, and distribution (~~((thereof))~~). The commissioner
25 (~~((shall))~~) must promptly deposit all funds received (~~((by him pursuant~~
26 ~~to))~~) under this subsection with the state treasurer to the credit of
27 the (~~((general fund))~~) insurance commissioner's regulatory account. For
28 appropriation purposes, (~~((such))~~) the funds received and deposited by
29 the commissioner (~~((shall))~~) must be treated as a recovery of a previous
30 expenditure.

31 **Sec. 2.** RCW 48.05.340 and 1995 c 83 s 14 are each amended to read
32 as follows:

33 (1) Subject to RCW 48.05.350 (~~((and 48.05.360))~~) to qualify for
34 authority to transact any one kind of insurance as defined in chapter
35 48.11 RCW or combination of kinds of insurance as (~~((shown below))~~) set
36 forth in this subsection, a foreign or alien insurer, whether stock or
37 mutual, or a domestic insurer (~~((hereafter))~~) formed (~~((shall))~~) after the

1 effective date of this section must possess unimpaired paid-in capital
 2 stock, if a stock insurer, or unimpaired surplus if a mutual insurer,
 3 and additional funds in surplus, as follows, and (~~shall~~) must
 4 thereafter maintain unimpaired a combined total of: (a) The paid-in
 5 capital stock if a stock insurer or surplus if a mutual insurer, plus
 6 (b) (~~such~~) additional funds in surplus equal to the total of the
 7 following initial requirements:

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

1 Title(~~(in accordance~~ 2,000,000 2,000,000
2 with the
3 provisions of
4 chapter 48.29
5 RCW))

6 (2) Capital and surplus requirements are based upon all the kinds
7 of insurance transacted by the insurer wherever it (~~(may)~~) operates or
8 proposes to operate, whether or not only a portion of (~~(such)~~) the
9 kinds are to be transacted in this state.

10 (3) Until December 31, 1996, a foreign or alien insurer holding a
11 certificate of authority to transact insurance in this state
12 immediately prior to June 9, 1994, may continue to be authorized to
13 transact the same kinds of insurance as long as it is otherwise
14 qualified for (~~(such)~~) that authority. A domestic insurer, except a
15 title insurer, holding a certificate of authority to transact insurance
16 in this state immediately prior to June 9, 1994, may continue to be
17 authorized to transact the same kinds of insurance as long as it is
18 otherwise qualified for such an authority and thereafter maintains
19 unimpaired the amount of paid-in capital stock, if a stock insurer, or
20 basic surplus, if a mutual or reciprocal insurer, and special or
21 additional surplus as required of it under laws in force immediately
22 prior to June 9, 1994.

23 **Sec. 3.** RCW 48.11.100 and 1947 c 79 s .11.10 are each amended to
24 read as follows:

25 "Title insurance" is insurance of owners of real property or others
26 having an interest (~~(therein)~~) in real property, against loss by
27 encumbrance, or defective titles, or adverse claim to title, and
28 associated services (~~(connected therewith)~~).

29 **Sec. 4.** RCW 48.11.140 and 1993 c 462 s 53 are each amended to read
30 as follows:

31 (1) (~~(No)~~) An insurer (~~(shall)~~) may not retain any risk on any one
32 subject of insurance, whether located or to be performed in this state
33 or elsewhere, in an amount exceeding ten percent of its surplus to
34 policyholders.

35 (2) For the purposes of this section, a "subject of insurance" as

1 to insurance against fire includes all properties insured by the same
2 insurer (~~(which)~~) that are reasonably subject to loss or damage from
3 the same fire.

4 (3) Reinsurance in an alien reinsurer not qualified under RCW
5 (~~(48.05.300)~~) 48.12.166 may not be deducted in determining risk
6 retained for the purposes of this section.

7 (4) In the case of surety insurance, the net retention shall be
8 computed after deduction of reinsurances, the amount assumed by any
9 co-surety, the value of any security deposited, pledged, or held
10 subject to the consent of the surety and for the protection of the
11 surety.

12 (5) This section does not apply to life insurance, disability
13 insurance, title insurance, or insurance of marine risks or marine
14 protection and indemnity risks.

15 **Sec. 5.** RCW 48.18.430 and 1949 c 190 s 25 are each amended to read
16 as follows:

17 (1) The benefits, rights, privileges, and options (~~(which)~~) under
18 any annuity contract (~~(heretofore or hereafter issued are due or~~
19 ~~prospectively)~~) that are due the annuitant who paid the consideration
20 for the annuity contract (~~(, shall not be)~~) are not subject to execution
21 (~~(nor shall)~~) and the annuitant may not be compelled to exercise (~~(any~~
22 ~~such)~~) those rights, powers, or options, (~~(nor shall)~~) and creditors
23 (~~(be)~~) are not allowed to interfere with or terminate the contract,
24 except:

25 (a) As to amounts paid for or as premium on (~~(any such)~~) an annuity
26 with intent to defraud creditors, with interest thereon, and of which
27 the creditor has given the insurer written notice at its home office
28 prior to (~~(the)~~) making (~~(of)~~) the payments to the annuitant out of
29 which the creditor seeks to recover. (~~(Any such)~~) The notice (~~(shall)~~)
30 must specify the amount claimed or (~~(such)~~) the facts (~~(as)~~) that will
31 enable the insurer to (~~(ascertain such)~~) determine the amount, and
32 (~~(shall)~~) must set forth (~~(such)~~) the facts (~~(as)~~) that will enable the
33 insurer to (~~(ascertain)~~) determine the insurance or annuity contract,
34 the person insured or annuitant and the payments sought to be avoided
35 on the (~~(ground)~~) basis of fraud.

36 (b) The total exemption of benefits presently due and payable to
37 (~~(any)~~) an annuitant periodically or at stated times under all annuity

1 contracts (~~((under which he is an annuitant, shall))~~) may not at any time
2 exceed two thousand five hundred (~~((and fifty))~~) dollars per month for
3 the length of time represented by (~~((such))~~) the installments, and (~~((that~~
4 ~~such))~~) a periodic payment in excess of two thousand five hundred (~~((and~~
5 ~~fifty))~~) dollars per month (~~((shall be))~~) is subject to garnishee
6 execution to the same extent as are wages and salaries.

7 (c) If the total benefits presently due and payable to (~~((any))~~) an
8 annuitant under all annuity contracts (~~((under which he is an annuitant,~~
9 ~~shall))~~) at any time exceeds payment at the rate of two thousand five
10 hundred (~~((and fifty))~~) dollars per month, then the court may order
11 (~~((such))~~) the annuitant to pay to a judgment creditor or apply on the
12 judgment, in installments, (~~((such))~~) the portion of (~~((such))~~) the excess
13 benefits (~~((as to))~~) that the court (~~((may appear))~~) determines to be just
14 and proper, after due regard for the reasonable requirements of the
15 judgment debtor and (~~((his family, if dependent upon him))~~) the judgment
16 debtor's dependent family, as well as any payments required to be made
17 by the annuitant to other creditors under prior court orders.

18 (2) The benefits, rights, privileges, or options accruing under
19 (~~((such))~~) an annuity contract to a beneficiary or assignee (~~((shall not~~
20 ~~be))~~) are not transferable (~~((nor))~~) or subject to commutation, and if the
21 benefits are payable periodically or at stated times, the same
22 exemptions and exceptions contained (~~((herein))~~) in this section for the
23 annuitant (~~((, shall apply with respect to such))~~) apply to the
24 beneficiary or assignee.

25 (3) An annuity contract within the meaning of this section (~~((shall~~
26 ~~be))~~) is any obligation to pay certain sums at stated times, during life
27 or lives, or for a specified term or terms, issued for a valuable
28 consideration, regardless of whether or not (~~((such))~~) the sums are
29 payable to one or more persons, jointly or otherwise, but does not
30 include payments under life insurance contracts at stated times during
31 life or lives, or for a specified term or terms.

32 **Sec. 6.** RCW 48.21.047 and 1995 c 265 s 22 are each amended to read
33 as follows:

34 (1) (~~((No insurer shall))~~) An insurer may not offer any health
35 benefit plan to any small employer without complying with (~~((the~~
36 ~~provisions of))~~) RCW 48.21.045(~~((+5))~~) (3).

1 (2) Employers purchasing health plans provided through associations
2 or through member-governed groups formed specifically for the purpose
3 of purchasing health care (~~((shall not be considered))~~) are not small
4 employers and (~~((such plans shall not be subject to the provisions of~~
5 ~~RCW 48.21.045(5))~~) the plans are not subject to RCW 48.21.045(3).

6 (3) For purposes of this section, "health benefit plan," "health
7 plan," and "small employer" mean the same as defined in RCW 48.43.005.

8 **Sec. 7.** RCW 48.23.010 and 1979 c 130 s 2 are each amended to read
9 as follows:

10 (~~((The provisions of this chapter apply))~~) This chapter applies to
11 contracts of life insurance and annuities other than group life
12 insurance, group annuities, and, except for RCW 48.23.260, 48.23.270,
13 and 48.23.340, (~~((and 48.23.350,))~~) other than industrial life
14 insurance(~~((: PROVIDED, That the provisions of))~~). However, Title 48
15 RCW (~~((shall))~~) does not apply to charitable gift annuities issued by a
16 board of a state university, regional university, or a state college,
17 nor to the issuance thereof.

18 **Sec. 8.** RCW 48.24.030 and 1993 c 132 s 1 are each amended to read
19 as follows:

20 (1) Insurance under any group life insurance policy issued
21 (~~((pursuant to))~~) under RCW 48.24.020, (~~((or))~~) 48.24.050, (~~((or))~~)
22 48.24.060, (~~((or))~~) 48.24.070, or 48.24.090 may, if seventy-five percent
23 of the then insured employees or labor union members or public employee
24 association members or members of the Washington state patrol elect, be
25 extended to insure the spouse and dependent children, or any class or
26 classes thereof, of each (~~((such))~~) insured employee or member who so
27 elects, in amounts in accordance with a plan (~~((which))~~) that precludes
28 individual selection by the employees or members or by the employer or
29 labor union or trustee(~~((, and which insurance on the life of any one~~
30 ~~family member including a spouse shall not be in excess of fifty~~
31 ~~percent of the insurance on the life of the insured employee or~~
32 ~~member))~~).

33 Premiums for the insurance on (~~((such))~~) the family members shall be
34 paid by the policyholder, either from the employer's funds or funds
35 contributed by him, trustee's funds, or labor union funds, and/or from
36 funds contributed by the insured employees or members, or from both.

1 (2) ~~((Such))~~ A spouse insured ~~((pursuant to))~~ under this section
2 ~~((shall have))~~ has the same conversion right as to the insurance on his
3 or her life as is vested in the employee or member under this chapter.

4 **Sec. 9.** RCW 48.29.010 and 1997 c 14 s 1 are each amended to read
5 as follows:

6 (1) This chapter relates only to title insurers for real property.

7 (2) ~~((None of the provisions of))~~ This code ~~((shall be deemed to))~~
8 does not apply to persons engaged in the business of preparing and
9 issuing abstracts of title to property and certifying to ~~((the))~~ their
10 correctness ~~((thereof))~~ so long as ~~((such))~~ the persons do not
11 guarantee or insure ~~((such))~~ the titles.

12 (3) For purposes of this chapter, unless the context clearly
13 requires otherwise:

14 (a) "Title policy" means any written instrument, contract, or
15 guarantee by means of which title insurance liability is assumed.

16 (b) "Abstract of title" means a written representation, provided
17 ~~((pursuant to))~~ under contract, whether written or oral, intended to be
18 relied upon by the person who has contracted for the receipt of
19 ~~((such))~~ this representation, listing all recorded conveyances,
20 instruments, or documents ~~((which))~~ that, under the laws of the state
21 of Washington, impart constructive notice with respect to the chain of
22 title to the real property described. An abstract of title is not a
23 title policy as defined in this subsection.

24 (c) "Preliminary report," "commitment," or "binder" means reports
25 furnished in connection with an application for title insurance and are
26 offers to issue a title policy subject to the stated exceptions ~~((set~~
27 ~~forth))~~ in the reports, the conditions and stipulations of the report
28 and the issued policy, and ~~((such))~~ other matters as may be
29 incorporated by reference. The reports are not abstracts of title, nor
30 are any of the rights, duties, or responsibilities applicable to the
31 preparation and issuance of an abstract of title applicable to the
32 issuance of any report. ~~((Any such))~~ The report ~~((shall not be~~
33 ~~construed as, nor constitute,))~~ is not a representation as to the
34 condition of the title to real property, but ~~((shall constitute))~~ is a
35 statement of terms and conditions upon which the issuer is willing to
36 issue its title policy, if ~~((such))~~ the offer is accepted.

1 **Sec. 10.** RCW 48.29.020 and 1990 c 76 s 1 are each amended to read
2 as follows:

3 A title insurer (~~(shall not be)~~) is not entitled to have a
4 certificate of authority unless it otherwise qualifies (~~(therefor,~~
5 ~~nor)~~) for a certificate of authority, or unless:

6 (1) It is a stock corporation.

7 (2) It owns or leases and maintains a complete set of tract indexes
8 of the county in this state in which its principal office (~~(within this~~
9 ~~state))~~) is located.

10 (3) (~~(It deposits and keeps on deposit with the commissioner a~~
11 ~~guaranty fund in amount as set forth in RCW 48.29.030 and comprised of~~
12 ~~cash or public obligations as specified in RCW 48.13.040.)~~) It has and
13 maintains the capital and surplus requirements set forth in RCW
14 48.05.340.

15 **Sec. 11.** RCW 48.29.120 and 1947 c 79 s .29.12 are each amended to
16 read as follows:

17 (~~(1) Each title insurer shall annually apportion to a special~~
18 ~~reserve fund an amount determined by applying the rate of twenty five~~
19 ~~cents for each one thousand dollars of net increase of insurance it has~~
20 ~~in force as at the end of such year. Such apportionment shall be~~
21 ~~continued or resumed as needed to maintain the special reserve fund at~~
22 ~~an amount equal to not less than the guaranty fund deposit required of~~
23 ~~the insurer.~~

24 (2) ~~The special reserve fund shall be held by the insurer as an~~
25 ~~additional guaranty fund, and shall be used only for the payment of~~
26 ~~losses after the insurer's liquid resources available for the payment~~
27 ~~of losses, other than such special reserve fund or the guaranty fund~~
28 ~~deposit, have been exhausted.~~

29 (3) ~~For the purposes of computing the special reserve fund as~~
30 ~~provided in subsection (1) of this section, net increase of insurance~~
31 ~~in force resulting from reinsurance of the risks of another title~~
32 ~~insurer shall not be included to the extent that a like special reserve~~
33 ~~fund on such insurance is maintained by the ceding insurer.)~~) In
34 determining the financial condition of a title insurer doing business
35 under this title, the general provisions of chapter 48.12 RCW requiring
36 the establishment of reserves sufficient to cover all known and unknown

1 liabilities including allocated and unallocated loss adjustment expense
2 apply, except that a title insurer shall establish and maintain:

3 (1) A known claim reserve in an amount estimated to be sufficient
4 to cover all unpaid losses, claims, and allocated loss adjustment
5 expenses arising under title insurance policies, guaranteed
6 certificates of title, guaranteed searches, and guaranteed abstracts of
7 title, and all unpaid losses, claims, and allocated loss adjustment
8 expenses for which the title insurer may be liable, and for which the
9 insurer has received notice by or on behalf of the insured, holder of
10 a guarantee or escrow, or security depositor;

11 (2)(a) A statutory or unearned premium reserve consisting of:

12 (i) The amount of the special reserve fund that was required prior
13 to the effective date of this section, which balance must be released
14 in accordance with (b) of this subsection; and

15 (ii) Additions to the reserve after the effective date of this
16 section must be made out of total charges for title insurance policies
17 and guarantees written, as set forth in the title insurer's most recent
18 annual statement on file with the commissioner, equal to the sum of
19 the following:

20 (A) For each title insurance policy on a single risk written or
21 assumed after the effective date of this section, fifteen cents per one
22 thousand dollars of net retained liability for policies under five
23 hundred thousand dollars; and

24 (B) For each title insurance policy on a single risk written or
25 assumed after the effective date of this section, ten cents per one
26 thousand dollars of net retained liability for policies of five hundred
27 thousand or greater.

28 (b) The aggregate of the amounts set aside in this reserve in any
29 calendar year pursuant to (a) of this subsection must be released from
30 the reserve and restored to net profits over a period of twenty years
31 under the following formula:

32 (i) Thirty-five percent of the aggregate sum on July 1st of the
33 year next succeeding the year of addition;

34 (ii) Fifteen percent of the aggregate sum on July 1st of each of
35 the succeeding two years;

36 (iii) Ten percent of the aggregate sum on July 1st of the next
37 succeeding year;

1 (iv) Three percent of the aggregate sum on July 1st of each of the
2 next three succeeding years;

3 (v) Two percent of the aggregate sum on July 1st of each of the
4 next three succeeding years; and

5 (vi) One percent of the aggregate sum on July 1st of each of the
6 next succeeding ten years.

7 (c) The insurer shall calculate an adjusted statutory unearned
8 premium reserve as of the effective date of this section. The adjusted
9 reserve is calculated as if (a)(ii) and (b) of this subsection had been
10 in effect for all years beginning twenty years prior to the effective
11 date of this section. For purposes of this calculation, the balance of
12 the reserve as of that date is deemed to be zero. If the adjusted
13 reserve so calculated exceeds the aggregate amount set aside for
14 statutory or unearned premiums in the insurer's annual statement on
15 file with the commissioner on the effective date of this section, the
16 insurer shall, out of total charges for policies of title insurance,
17 increase its statutory or unearned premium reserve by an amount equal
18 to one-sixth of that excess in each of the succeeding six years,
19 commencing with the calendar year that includes the effective date of
20 this section, until the entire excess has been added.

21 (d) The aggregate of the amounts set aside in this reserve in any
22 calendar year as adjustments to the insurer's statutory or unearned
23 premium reserve under (c) of this subsection shall be released from the
24 reserve and restored to net profits, or equity if the additions
25 required by (c) of this subsection reduced equity directly, over a
26 period not exceeding ten years under to the following table:

<u>Year of Addition</u>	<u>Release</u>
<u>Year 1*</u>	<u>Equally over 10 years</u>
<u>Year 2</u>	<u>Equally over 9 years</u>
<u>Year 3</u>	<u>Equally over 8 years</u>
<u>Year 4</u>	<u>Equally over 7 years</u>
<u>Year 5</u>	<u>Equally over 6 years</u>
<u>Year 6</u>	<u>Equally over 5 years</u>

34 *(The calendar year following the effective date of this section).

35 (3) A supplemental reserve shall be established consisting of any
36 other reserves necessary, when taken in combination with the reserves

1 required by subsections (1) and (2) of this section, to cover the
2 company's liabilities with respect to all losses, claims, and loss
3 adjustment expenses.

4 (4) The supplemental reserve required under subsection (3) of this
5 section shall be phased in as follows: Twenty-five percent of the
6 otherwise applicable supplemental reserve will be required until
7 December 31, 2006; fifty percent of the otherwise applicable
8 supplemental reserve will be required until December 31, 2007; and
9 seventy-five percent of the otherwise applicable supplemental reserve
10 will be required until December 31, 2008.

11 **Sec. 12.** RCW 48.29.130 and 1967 c 150 s 30 are each amended to
12 read as follows:

13 ~~((The funds of a domestic title insurer, other than those~~
14 ~~representing its guaranty fund deposit, shall be invested)) A domestic
15 title insurer shall invest its funds as follows:~~

16 (1) Funds in an amount not less than its reserve required (~~special~~
17 ~~reserve shall)) by RCW 48.29.120 must be kept invested in investments
18 eligible for domestic life insurers.~~

19 (2) Other funds may be invested in:

20 (a) The insurer's plant and equipment, up to a maximum of fifty
21 percent of capital plus surplus.

22 (b) Stocks and bonds of abstract companies when approved by the
23 commissioner.

24 (c) Investments eligible for the investment of funds of any
25 domestic insurer.

26 **Sec. 13.** RCW 48.29.170 and 1981 c 223 s 2 are each amended to read
27 as follows:

28 Title insurance agents (~~shall be~~) are exempt from the provisions
29 of RCW (~~48.17.090(2) and~~) 48.17.180(1) (~~which otherwise~~) that
30 require that each individual empowered to exercise the authority of a
31 licensed firm or corporation must be separately licensed.

32 **Sec. 14.** RCW 48.30.300 and 1993 c 492 s 287 are each amended to
33 read as follows:

34 Notwithstanding any provision contained in Title 48 RCW to the
35 contrary:

1 ~~((1) No))~~ A person or entity engaged in the business of insurance
2 in this state ~~((shall))~~ may not refuse to issue any contract of
3 insurance or cancel or decline to renew such contract because of the
4 sex or marital status, or the presence of any sensory, mental, or
5 physical handicap of the insured or prospective insured. The amount of
6 benefits payable, or any term, rate, condition, or type of coverage
7 ~~((shall))~~ may not be restricted, modified, excluded, increased, or
8 reduced on the basis of the sex or marital status, or be restricted,
9 modified, excluded, or reduced on the basis of the presence of any
10 sensory, mental, or physical handicap of the insured or prospective
11 insured. ~~((Subject to the provisions of subsection (2) of this section
12 these provisions shall))~~ This subsection does not prohibit fair
13 discrimination on the basis of sex, or marital status, or the presence
14 of any sensory, mental, or physical handicap when bona fide statistical
15 differences in risk or exposure have been substantiated.

16 ~~((2) With respect to disability policies issued or renewed on and
17 after July 1, 1994, that provide coverage against loss arising from
18 medical, surgical, hospital, or emergency care services:~~

19 ~~(a) Policies shall guarantee continuity of coverage. Such
20 provision, which shall be included in every policy, shall provide that:~~

21 ~~(i) The policy may be canceled or nonrenewed without the prior
22 written approval of the commissioner only for nonpayment of premium or
23 as permitted under RCW 48.18.090; and~~

24 ~~(ii) The policy may be canceled or nonrenewed because of a change
25 in the physical or mental condition or health of a covered person only
26 with the prior written approval of the commissioner. Such approval
27 shall be granted only when the insurer has discharged its obligation to
28 continue coverage for such person by obtaining coverage with another
29 insurer, health care service contractor, or health maintenance
30 organization, which coverage is comparable in terms of premiums and
31 benefits as defined by rule of the commissioner.~~

32 ~~(b) It is an unfair practice for a disability insurer to modify the
33 coverage provided or rates applying to an in force disability insurance
34 policy and to fail to make such modification in all such issued and
35 outstanding policies.~~

36 ~~(c) Subject to rules adopted by the commissioner, it is an unfair
37 practice for a disability insurer to:~~

1 ~~(i) Cease the sale of a policy form unless it has received prior~~
2 ~~written authorization from the commissioner and has offered all~~
3 ~~policyholders covered under such discontinued policy the opportunity to~~
4 ~~purchase comparable coverage without health screening; or~~

5 ~~(ii) Engage in a practice that subjects policyholders to rate~~
6 ~~increases on discontinued policy forms unless such policyholders are~~
7 ~~offered the opportunity to purchase comparable coverage without health~~
8 ~~screening.~~

9 ~~The insurer may limit an offer of comparable coverage without~~
10 ~~health screening to a period not less than thirty days from the date~~
11 ~~the offer is first made.))~~

12 **Sec. 15.** RCW 48.30A.045 and 1997 c 92 s 1 are each amended to read
13 as follows:

14 (1) Each insurer licensed to write direct insurance in this state,
15 except those exempted in subsection (2) of this section, ~~((shall))~~ must
16 institute and maintain an insurance antifraud plan. ~~((An insurer~~
17 ~~licensed on July 1, 1995, shall file its antifraud plan with the~~
18 ~~insurance commissioner no later than December 31, 1995.))~~ An insurer
19 licensed after July 1, 1995, ~~((shall))~~ must file its antifraud plan
20 within six months of licensure. An insurer ~~((shall))~~ must file any
21 change to the antifraud plan with the insurance commissioner within
22 thirty days after the plan has been modified.

23 (2) This section does not apply to:

24 (a) Health carriers, as defined in RCW 48.43.005((~~τ~~));

25 (b) Life insurers((~~τ-~~or~~~~));

26 (c) Title insurers; ((~~or~~))

27 (d) Property or casualty insurers with annual gross written medical
28 malpractice insurance premiums in this state that exceed fifty percent
29 of their total annual gross written premiums in this state; ((~~or all~~))

30 (e) Credit-related insurance written in connection with a credit
31 transaction in which the creditor is named as a beneficiary or loss
32 payee under the policy, except vendor single-interest or collateral
33 protection coverage as defined in RCW 48.22.110(4); or

34 (f) Insurers with gross written premiums of less than one thousand
35 dollars in Washington during the reporting year.

1 **Sec. 16.** RCW 48.30A.060 and 1995 c 285 s 12 are each amended to
2 read as follows:

3 By March 31st of each year, each insurer (~~((shall annually))~~) must
4 provide to the insurance commissioner a summary report on actions taken
5 under its antifraud plan to prevent and combat insurance fraud. The
6 report must also include, but not be limited to, measures taken to
7 protect and ensure the integrity of electronic data processing-
8 generated data and manually compiled data, statistical data on the
9 amount of resources committed to combatting fraud, and the amount of
10 fraud identified and recovered during the reporting period. The
11 antifraud plans and summary of the insurer's antifraud activities are
12 not public records and are exempt from chapter 42.17 RCW, are
13 proprietary, are not subject to public examination, and are not
14 discoverable or admissible in civil litigation.

15 **Sec. 17.** RCW 48.30A.065 and 1995 c 285 s 13 are each amended to
16 read as follows:

17 An insurer that fails to file a timely antifraud plan or (~~who does~~
18 ~~not~~) summary report or that fails to make a good faith attempt to file
19 an antifraud plan that complies with RCW 48.30A.050 or a summary report
20 that complies with RCW 48.30A.060, is subject to the penalty provisions
21 of RCW 48.01.080, but no penalty may be imposed for the first filing
22 made by an insurer under this chapter. An insurer that fails to follow
23 the antifraud plan is subject to a civil penalty not to exceed ten
24 thousand dollars for each violation, at the discretion of the
25 commissioner after consideration of all relevant factors, including the
26 willfulness of the violation.

27 **Sec. 18.** RCW 48.31.100 and 1947 c 79 s .31.10 are each amended to
28 read as follows:

29 (1) An order to conserve the assets of a foreign or alien insurer
30 (~~shall~~) must direct the commissioner (~~forthwith~~) immediately to
31 take possession of the property of the insurer within this state and to
32 conserve it, subject to the further direction of the court.

33 (2) Whenever a domiciliary receiver is appointed for (~~any such~~)
34 a foreign or alien insurer in its domiciliary state (~~which~~) that is
35 also a reciprocal state, as defined in RCW (~~48.31.110~~) 48.99.010, the

1 court shall on application of the commissioner appoint the commissioner
2 as the ancillary receiver in this state, subject to the provisions of
3 the uniform insurers liquidation act.

4 **Sec. 19.** RCW 48.38.030 and 1979 c 130 s 8 are each amended to read
5 as follows:

6 Each charitable annuity contract or policy form (~~shall~~) must
7 include the following information:

8 (1) The value of the property to be transferred;

9 (2) The amount of the annuity to be paid to the transferor or the
10 transferor's nominee;

11 (3) The manner in which and the intervals at which payment is to be
12 made;

13 (4) The age of the person during whose life payment is to be made;
14 and

15 (5) The reasonable value as of the date of the agreement of the
16 benefits (~~thereby~~) created. This value (~~shall~~) may not exceed by
17 more than fifteen percent the net single premium for the benefits,
18 determined (~~in accordance with~~) according to the standard of
19 valuation set forth in RCW 48.38.020(~~(1)~~) (3).

20 **Sec. 20.** RCW 48.44.240 and 1990 1st ex.s. c 3 s 12 are each
21 amended to read as follows:

22 Each group contract for health care services (~~which~~) that is
23 delivered or issued for delivery or renewed, on or after January 1,
24 1988, (~~shall~~) must contain provisions providing benefits for the
25 treatment of chemical dependency rendered to covered persons by a
26 provider (~~which~~) that is an "approved treatment (~~facility or~~)
27 program" under RCW 70.96A.020(3).

28 NEW SECTION. **Sec. 21.** A new section is added to chapter 48.66 RCW
29 to read as follows:

30 (1) An issuer may not deny or condition the issuance or
31 effectiveness of any medicare supplement policy or certificate
32 available for sale in this state, or discriminate in the pricing of a
33 policy or certificate because of the health status, claims experience,
34 receipt of health care, or medical condition of an applicant in the
35 case of an application for a policy or certificate that is submitted

1 prior to or during the six-month period beginning with the first day of
2 the first month in which an individual is both sixty-five years of age
3 or older and is enrolled for benefits under medicare part B. Each
4 medicare supplement policy and certificate currently available from an
5 insurer must be made available to all applicants who qualify under this
6 subsection without regard to age.

7 (2) If an applicant qualifies under this section and submits an
8 application during the time period referenced in subsection (1) of this
9 section and, as of the date of application, has had a continuous period
10 of creditable coverage of at least six months, the issuer may not
11 exclude benefits based on a preexisting condition.

12 (3) If an applicant qualified under this section and submits an
13 application during the time period referenced in subsection (1) of this
14 section and, as of the date of application, has had a continuous period
15 of creditable coverage that is less than six months, the issuer must
16 reduce the period of any preexisting condition exclusion by the
17 aggregate of the period of creditable coverage applicable to the
18 applicant as of the enrollment date.

19 **Sec. 22.** RCW 48.66.020 and 1996 c 269 s 1 are each amended to read
20 as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

23 (1) "Medicare supplemental insurance" or "medicare supplement
24 insurance policy" refers to a group or individual policy of disability
25 insurance or a subscriber contract of a health care service contractor,
26 a health maintenance organization, or a fraternal benefit society,
27 which relates its benefits to medicare, or which is advertised,
28 marketed, or designed primarily as a supplement to reimbursements under
29 medicare for the hospital, medical, or surgical expenses of persons
30 eligible for medicare. Such term does not include:

31 (a) A policy or contract of one or more employers or labor
32 organizations, or of the trustees of a fund established by one or more
33 employers or labor organizations, or combination thereof, for employees
34 or former employees, or combination thereof, or for members or former
35 members, or combination thereof, of the labor organizations; or

36 (b) A policy issued pursuant to a contract under Section 1876 of

1 the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an
2 issued policy under a demonstration specified in 42 U.S.C. Sec.
3 1395(g)(1); or

4 (c) Insurance policies or health care benefit plans, including
5 group conversion policies, provided to medicare eligible persons, that
6 are not marketed or held to be medicare supplement policies or benefit
7 plans.

8 (2) "Medicare" means the "Health Insurance for the Aged Act," Title
9 XVIII of the Social Security Amendments of 1965, as then constituted or
10 later amended.

11 (3) "Medicare eligible expenses" means health care expenses of the
12 kinds covered by medicare, to the extent recognized as reasonable and
13 medically necessary by medicare.

14 (4) "Applicant" means:

15 (a) In the case of an individual medicare supplement insurance
16 policy or subscriber contract, the person who seeks to contract for
17 insurance benefits; and

18 (b) In the case of a group medicare supplement insurance policy or
19 subscriber contract, the proposed certificate holder.

20 (5) "Certificate" means any certificate delivered or issued for
21 delivery in this state under a group medicare supplement insurance
22 policy.

23 (6) "Loss ratio" means the incurred claims as a percentage of the
24 earned premium computed under rules adopted by the insurance
25 commissioner.

26 (7) "Preexisting condition" means a covered person's medical
27 condition that caused that person to have received medical advice or
28 treatment during a specified time period immediately prior to the
29 effective date of coverage.

30 (8) "Disclosure form" means the form designated by the insurance
31 commissioner which discloses medicare benefits, the supplemental
32 benefits offered by the insurer, and the remaining amount for which the
33 insured will be responsible.

34 (9) "Issuer" includes insurance companies, health care service
35 contractors, health maintenance organizations, fraternal benefit
36 societies, and any other entity delivering or issuing for delivery
37 medicare supplement policies or certificates to a resident of this
38 state.

1 (10)(a) "Creditable coverage" means, with respect to an individual,
2 coverage of the individual provided under any of the following:

- 3 (i) A group health plan;
- 4 (ii) Health insurance coverage;
- 5 (iii) Part A or Part B of Title XVIII of the social security act
6 (medicare);
- 7 (iv) Title XIX of the social security act (medicaid), other than
8 coverage consisting solely of benefits under section 1928;
- 9 (v) Chapter 55 of Title 10 United States Code (CHAMPUS);
- 10 (vi) A medical care program of the Indian health service or of a
11 tribal organization;
- 12 (vii) A state health benefits risk pool;
- 13 (viii) A health plan offered under chapter 89 of Title 5 United
14 States Code (federal employees health benefits program);
- 15 (ix) A public health plan as defined in federal regulation; and
- 16 (x) A health benefit plan under section 5(e) of the peace corps act
17 (22 U.S.C. Sec. 2504(e)).

18 (b) "Creditable coverage" does not include one or more, or any
19 combination, of the following:

- 20 (i) Coverage only for accident or disability income insurance, or
21 any combination thereof;
- 22 (ii) Coverage issued as a supplement to liability insurance;
- 23 (iii) Liability insurance, including general liability insurance
24 and automobile liability insurance;
- 25 (iv) Worker's compensation or similar insurance;
- 26 (v) Automobile medical payment insurance;
- 27 (vi) Credit-only insurance;
- 28 (vii) Coverage for on-site medical clinics; and
- 29 (viii) Other similar insurance coverage, specified in federal
30 regulations, under which benefits for medical care are secondary or
31 incidental to other insurance benefits.

32 (c) "Creditable coverage" does not include the following benefits
33 if they are provided under a separate policy, certificate, or contract
34 of insurance or are otherwise not an integral part of the plan:

- 35 (i) Limited scope dental or vision benefits;
- 36 (ii) Benefits for long-term care, nursing home care, home health
37 care, community-based care, or any combination thereof; and

1 (iii) Other similar, limited benefits as are specified in federal
2 regulations.

3 (d) "Creditable coverage" does not include the following benefits
4 if offered as independent, noncoordinated benefits:

5 (i) Coverage only for a specified disease or illness; and

6 (ii) Hospital indemnity or other fixed indemnity insurance.

7 (e) "Creditable coverage" does not include the following if it is
8 offered as a separate policy, certificate, or contract of insurance:

9 (i) Medicare supplemental health insurance as defined under section
10 1882(g)(1) of the social security act;

11 (ii) Coverage supplemental to the coverage provided under chapter
12 55 of Title 10, United States Code; and

13 (iii) Similar supplemental coverage provided to coverage under a
14 group health plan.

15 **Sec. 23.** RCW 48.66.055 and 2002 c 300 s 4 are each amended to read
16 as follows:

17 (1) Under this section, persons eligible for a medicare supplement
18 policy or certificate are those individuals described in subsection (3)
19 of this section who, subject to subsection (3)(b)(ii) of this section,
20 apply to enroll under the policy not later than sixty-three days after
21 the date of the termination of enrollment described in subsection (3)
22 of this section, and who submit evidence of the date of termination or
23 disenrollment with the application for a medicare supplement policy.

24 (2) With respect to eligible persons, an issuer may not deny or
25 condition the issuance or effectiveness of a medicare supplement policy
26 described in subsection (4) of this section that is offered and is
27 available for issuance to new enrollees by the issuer, (~~shall~~) may
28 not discriminate in the pricing of such a medicare supplement policy
29 because of health status, claims experience, receipt of health care, or
30 medical condition, and (~~shall~~) may not impose an exclusion of
31 benefits based on a preexisting condition under such a medicare
32 supplement policy.

33 (3) "Eligible persons" means an individual that meets the
34 requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as
35 follows:

36 (a) The individual is enrolled under an employee welfare benefit

1 plan that provides health benefits that supplement the benefits under
2 medicare; and the plan terminates, or the plan ceases to provide all
3 such supplemental health benefits to the individual;

4 (b)(i) The individual is enrolled with a medicare+choice
5 organization under a medicare+choice plan under part C of medicare, and
6 any of the following circumstances apply, or the individual is sixty-
7 five years of age or older and is enrolled with a program of all
8 inclusive care for the elderly (PACE) provider under section 1894 of
9 the social security act, and there are circumstances similar to those
10 described in this subsection (3)(b) that would permit discontinuance of
11 the individual's enrollment with the provider if the individual were
12 enrolled in a medicare+choice plan:

13 (A) The certification of the organization or plan under this
14 subsection (3)(b) has been terminated, or the organization or plan has
15 notified the individual of an impending termination of such a
16 certification;

17 (B) The organization has terminated or otherwise discontinued
18 providing the plan in the area in which the individual resides, or has
19 notified the individual of an impending termination or discontinuance
20 of such a plan;

21 (C) The individual is no longer eligible to elect the plan because
22 of a change in the individual's place of residence or other change in
23 circumstances specified by the secretary of the United States
24 department of health and human services, but not including termination
25 of the individual's enrollment on the basis described in section
26 1851(g)(3)(B) of the federal social security act (where the individual
27 has not paid premiums on a timely basis or has engaged in disruptive
28 behavior as specified in standards under section 1856 of the federal
29 social security act), or the plan is terminated for all individuals
30 within a residence area;

31 (D) The individual demonstrates, in accordance with guidelines
32 established by the secretary of the United States department of health
33 and human services, that:

34 (I) The organization offering the plan substantially violated a
35 material provision of the organization's contract under this part in
36 relation to the individual, including the failure to provide an
37 enrollee on a timely basis medically necessary care for which benefits

1 are available under the plan or the failure to provide such covered
2 care in accordance with applicable quality standards; or

3 (II) The organization, an agent, or other entity acting on the
4 organization's behalf materially misrepresented the plan's provisions
5 in marketing the plan to the individual; or

6 (E) The individual meets other exceptional conditions as the
7 secretary of the United States department of health and human services
8 may provide.

9 (ii)(A) An individual described in (b)(i) of this subsection may
10 elect to apply (a) of this subsection by substituting, for the date of
11 termination of enrollment, the date on which the individual was
12 notified by the medicare+choice organization of the impending
13 termination or discontinuance of the medicare+choice plan it offers in
14 the area in which the individual resides, but only if the individual
15 disenrolls from the plan as a result of such notification.

16 (B) In the case of an individual making the election under
17 (b)(ii)(A) of this subsection, the issuer involved shall accept the
18 application of the individual submitted before the date of termination
19 of enrollment, but the coverage under subsection (1) of this section
20 (~~(shall only become)~~) is only effective upon termination of coverage
21 under the medicare+choice plan involved;

22 (c)(i) The individual is enrolled with:

23 (A) An eligible organization under a contract under section 1876
24 (medicare risk or cost);

25 (B) A similar organization operating under demonstration project
26 authority, effective for periods before April 1, 1999;

27 (C) An organization under an agreement under section 1833(a)(1)(A)
28 (health care prepayment plan); or

29 (D) An organization under a medicare select policy; and

30 (ii) The enrollment ceases under the same circumstances that would
31 permit discontinuance of an individual's election of coverage under
32 (b)(i) of this subsection;

33 (d) The individual is enrolled under a medicare supplement policy
34 and the enrollment ceases because:

35 (i)(A) Of the insolvency of the issuer or bankruptcy of the
36 nonissuer organization; or

37 (B) Of other involuntary termination of coverage or enrollment
38 under the policy;

1 (ii) The issuer of the policy substantially violated a material
2 provision of the policy; or

3 (iii) The issuer, an agent, or other entity acting on the issuer's
4 behalf materially misrepresented the policy's provisions in marketing
5 the policy to the individual;

6 (e)(i) The individual was enrolled under a medicare supplement
7 policy and terminates enrollment and subsequently enrolls, for the
8 first time, with any medicare+choice organization under a
9 medicare+choice plan under part C of medicare, any eligible
10 organization under a contract under section 1876 (medicare risk or
11 cost), any similar organization operating under demonstration project
12 authority, any PACE program under section 1894 of the social security
13 act, an organization under an agreement under section 1833(a)(1)(A)
14 (health care prepayment plan), or a medicare select policy; and

15 (ii) The subsequent enrollment under (e)(i) of this subsection is
16 terminated by the enrollee during any period within the first twelve
17 months of such subsequent enrollment (during which the enrollee is
18 permitted to terminate such subsequent enrollment under section 1851(e)
19 of the federal social security act); or

20 (f) The individual, upon first becoming eligible for benefits under
21 part A of medicare at age sixty-five, enrolls in a medicare+choice plan
22 under part C of medicare, or in a PACE program under section 1894, and
23 disenrolls from the plan or program by not later than twelve months
24 after the effective date of enrollment.

25 (4) An eligible person under subsection (3) of this section is
26 entitled to a medicare supplement policy as follows:

27 (a) A person eligible under subsection (3)(a), (b), (c), and (d) of
28 this section is entitled to a medicare supplement policy that has a
29 benefit package classified as plan A through G offered by any issuer;

30 (b) A person eligible under subsection (3)(e) of this section is
31 entitled to the same medicare supplement policy in which the individual
32 was most recently previously enrolled, if available from the same
33 issuer, or, if not so available, a policy described in (a) of this
34 subsection; and

35 (c) A person eligible under subsection (3)(f) of this section is
36 entitled to any medicare supplement policy offered by any issuer.

37 (5)(a) At the time of an event described in subsection (3) of this
38 section, and because of which an individual loses coverage or benefits

1 due to the termination of a contract, agreement, policy, or plan, the
2 organization that terminates the contract or agreement, the issuer
3 terminating the policy, or the administrator of the plan being
4 terminated, respectively, must notify the individual of his or her
5 rights under this section, and of the obligations of issuers of
6 medicare supplement policies under subsection (1) of this section. The
7 notice must be communicated contemporaneously with the notification of
8 termination.

9 (b) At the time of an event described in subsection (3) of this
10 section, and because of which an individual ceases enrollment under a
11 contract, agreement, policy, or plan, the organization that offers the
12 contract or agreement, regardless of the basis for the cessation of
13 enrollment, the issuer offering the policy, or the administrator of the
14 plan, respectively, must notify the individual of his or her rights
15 under this section, and of the obligations of issuers of medicare
16 supplement policies under subsection (1) of this section. The notice
17 must be communicated within ten working days of the issuer receiving
18 notification of disenrollment.

19 (6) In the case of an individual described in subsection (3)(e) of
20 this section whose enrollment with an organization or provider
21 described in subsection (3)(e)(i) of this section is involuntarily
22 terminated within the first twelve months of enrollment, and who,
23 without an intervening enrollment, enrolls with another organization or
24 provider, the subsequent enrollment is an initial enrollment as
25 described in subsection (3)(e) of this section.

26 (7) In the case of an individual described in subsection (3)(f) of
27 this section whose enrollment with a plan or in a program described in
28 subsection (3)(f) of this section is involuntarily terminated within
29 the first twelve months of enrollment, and who, without an intervening
30 enrollment, enrolls in another plan or program, the subsequent
31 enrollment is an initial enrollment as described in subsection (3)(f)
32 of this section.

33 (8) For purposes of subsection (3)(e) and (f) of this section, an
34 enrollment of an individual with an organization or provider described
35 in subsection (3)(e)(i) of this section, or with a plan or in a program
36 described in subsection (3)(f) of this section is not an initial
37 enrollment under this subsection after the two-year period beginning on

1 the date on which the individual first enrolled with such an
2 organization, provider, plan, or program.

3 **Sec. 24.** RCW 48.92.120 and 1993 c 462 s 101 are each amended to
4 read as follows:

5 (1) (~~No~~) A person may not act or aid in any manner in soliciting,
6 negotiating, or procuring liability insurance in this state from a risk
7 retention group unless the person is licensed as an insurance agent or
8 broker for casualty insurance in accordance with chapter 48.17 RCW and
9 pays the fees designated for the license under RCW 48.14.010.

10 (2)(a) (~~No~~) A person may not act or aid in any manner in
11 soliciting, negotiating, or procuring liability insurance in this state
12 for a purchasing group from an authorized insurer or a risk retention
13 group chartered in a state unless the person is licensed as an
14 insurance agent or broker for casualty insurance in accordance with
15 chapter 48.17 RCW and pays the fees designated for the license under
16 RCW 48.14.010.

17 (b) (~~No~~) A person may not act or aid in any manner in soliciting,
18 negotiating, or procuring liability insurance coverage in this state
19 for a member of a purchasing group under a purchasing group's policy
20 unless the person is licensed as an insurance agent or broker for
21 casualty insurance in accordance with chapter 48.17 RCW and pays the
22 fees designated for the license under RCW 48.14.010.

23 (c) (~~No~~) A person may not act or aid in any manner in soliciting,
24 negotiating, or procuring liability insurance from an insurer not
25 authorized to do business in this state on behalf of a purchasing group
26 located in this state unless the person is licensed as a surplus lines
27 broker in accordance with chapter 48.15 RCW and pays the fees
28 designated for the license under RCW 48.14.010.

29 (3) For purposes of acting as an agent or broker for a risk
30 retention group or purchasing group under subsections (1) and (2) of
31 this section, the requirement of residence in this state does not
32 apply.

33 (4) Every person licensed under chapters 48.15 and 48.17 RCW, on
34 business placed with risk retention groups or written through a
35 purchasing group, (~~shall~~) must inform each prospective insured of the
36 provisions of the notice required under RCW 48.92.040(7) in the case of

1 a risk retention group and RCW 48.92.090(~~(+3)~~) (2) in the case of a
2 purchasing group.

3 **Sec. 25.** RCW 48.98.015 and 1993 c 462 s 37 are each amended to
4 read as follows:

5 (~~No~~) A managing general agent may not place business with an
6 insurer unless there is in force a written contract between the
7 managing general agent and the insurer that sets forth the
8 responsibilities of each party and, where both parties share
9 responsibility for a particular function, that specifies the division
10 of the responsibilities, and that contains the following minimum
11 provisions:

12 (1) The insurer may terminate the contract for cause upon written
13 notice to the managing general agent. The insurer may suspend the
14 underwriting authority of the managing general agent during the
15 pendency of a dispute regarding the cause for termination.

16 (2) The managing general agent (~~shall~~) must render accounts to
17 the insurer detailing all transactions and remit all funds due under
18 the contract to the insurer on not less than a monthly basis.

19 (3) The managing general agent (~~shall~~) must hold funds collected
20 for the account of an insurer in a fiduciary capacity in (~~a~~) an FDIC
21 insured financial institution (~~located in this state that is a member~~
22 ~~of the federal reserve system~~). This account must be used for all
23 payments on behalf of the insurer. The managing general agent may
24 retain no more than three months' estimated claims payments and
25 allocated loss adjustment expenses.

26 (4) The managing general agent (~~shall~~) must maintain separate
27 records of business written for each insurer. The insurer has access
28 to and the right to copy all accounts and records related to its
29 business in a form usable by the insurer, and the commissioner has
30 access to all books, bank accounts, and records of the managing general
31 agent in a form usable to the commissioner. Those records (~~shall~~)
32 must be retained according to the requirements of this title and rules
33 adopted under it.

34 (5) The managing general agent may not assign the contract in whole
35 or part.

36 (6)(a) Appropriate underwriting guidelines must include at least
37 the following: The maximum annual premium volume; the basis of the

1 rates to be charged; the types of risks that may be written; maximum
2 limits of liability; applicable exclusions; territorial limitations;
3 policy cancellation provisions; and the maximum policy period.

4 (b) The insurer has the right to cancel or not renew any policy of
5 insurance, subject to the applicable laws and rules, including those in
6 chapter 48.18 RCW.

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

9 (a) All claims must be reported to the insurer in a timely manner.

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

12 (i) Has the potential to exceed an amount determined by the
13 commissioner, or exceeds the limit set by the insurer, whichever is
14 less;

15 (ii) Involves a coverage dispute;

16 (iii) May exceed the managing general agent's claims settlement
17 authority;

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

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

21 (c) All claim files are the joint property of the insurer and the
22 managing general agent. However, upon an order of liquidation of the
23 insurer, those files become the sole property of the insurer or its
24 liquidator or successor. The managing general agent has reasonable
25 access to and the right to copy the files on a timely basis.

26 (d) Settlement authority granted to the managing general agent may
27 be terminated for cause upon the insurer's written notice to the
28 managing general agent or upon the termination of the contract. The
29 insurer may suspend the managing general agent's settlement authority
30 during the pendency of a dispute regarding the cause for termination.

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

33 (9) If the contract provides for a sharing of interim profits by
34 the managing general agent, and the managing general agent has the
35 authority to determine the amount of the interim profits by
36 establishing loss reserves or controlling claim payments or in any
37 other manner, interim profits (~~shall~~) may not be paid to the managing
38 general agent until one year after they are earned for property

1 insurance business and five years after they are earned on casualty
2 business and not until the profits have been verified under RCW
3 48.98.020.

4 (10) The managing general agent may not:

5 (a) Bind reinsurance or retrocessions on behalf of the insurer,
6 except that the managing general agent may bind automatic reinsurance
7 contracts under obligatory automatic agreements if the contract with
8 the insurer contains reinsurance underwriting guidelines including, for
9 both reinsurance assumed and ceded, a list of reinsurers with which the
10 automatic agreements are in effect, the coverages and amounts or
11 percentages that may be reinsured, and commission schedules;

12 (b) Commit the insurer to participate in insurance or reinsurance
13 syndicates;

14 (c) Use an agent that is not appointed to represent the insurer in
15 accordance with the requirements of chapter 48.17 RCW;

16 (d) Without prior approval of the insurer, pay or commit the
17 insurer to pay a claim over a specified amount, net of reinsurance,
18 that (~~shall~~) may not exceed one percent of the insurer's policyholder
19 surplus as of December 31st of the last-completed calendar year;

20 (e) Collect a payment from a reinsurer or commit the insurer to a
21 claim settlement with a reinsurer, without prior approval of the
22 insurer. If prior approval is given, a report (~~shall~~) must be
23 promptly forwarded to the insurer;

24 (f) Permit an agent appointed by it to serve on the insurer's board
25 of directors;

26 (g) Jointly employ an individual who is employed by the insurer; or

27 (h) Appoint a submanaging general agent.

28 NEW SECTION. **Sec. 26.** The following acts or parts of acts are
29 each repealed:

30 (1) RCW 48.05.360 (Special surplus requirements for certain
31 combinations) and 1963 c 195 s 9;

32 (2) RCW 48.29.030 (Amount of deposit) and 1957 c 193 s 16 & 1947 c
33 79 s .29.03;

34 (3) RCW 48.29.060 (Impairment of deposit) and 1947 c 79 s .29.06;

35 (4) RCW 48.29.070 (Levy of execution against deposit) and 1955 c 86
36 s 14 & 1947 c 79 s .29.07;

1 (5) RCW 48.29.090 (Purpose of deposit) and 1955 c 86 s 16 & 1947 c
2 79 s .29.09;

3 (6) RCW 48.29.100 (Termination of deposit) and 1947 c 79 s .29.10;

4 (7) RCW 48.29.110 (Release of securities) and 1955 c 86 s 17 & 1947
5 c 79 s .29.11; and

6 (8) RCW 48.34.910 (Small loan act [Consumer finance act] not
7 affected) and 1961 c 219 s 14.

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