

---

HOUSE BILL 2728

---

State of Washington                      58th Legislature                      2004 Regular Session

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

Read first time 01/20/2004.      Referred to Committee on Financial Institutions & Insurance.

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. For appropriation purposes, (~~((such))~~) the funds  
28 received and deposited by the commissioner (~~((shall))~~) must be treated as  
29 a recovery of a previous expenditure.

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

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

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

	Paid-in	
Kind or kinds	capital	Additional
of insurance	stock or	surplus
	basic surplus	
Life .....	\$2,000,000	\$2,000,000
Disability .....	2,000,000	2,000,000
Life and disability ...	2,400,000	2,400,000
Property .....	2,000,000	2,000,000
Marine &		
transportation ....	2,000,000	2,000,000
General casualty ....	2,400,000	2,400,000
Vehicle .....	2,000,000	2,000,000
Surety .....	2,000,000	2,000,000
Any two of the		
following kinds		
of insurance:		
Property, marine		
& transportation,		
general casualty,		
vehicle, surety,		
disability .....	3,000,000	3,000,000
Multiple lines (all		
insurances except		
life and title		
insurance) .....	3,000,000	3,000,000
Title( <del>(in accordance</del>	<u>2,000,000</u>	<u>2,000,000</u>
with the		
provisions of		
chapter 48.29		
RCW))		

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

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

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

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

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

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

30 (2) For the purposes of this section, a "subject of insurance" as  
31 to insurance against fire includes all properties insured by the same  
32 insurer (~~which~~) that are reasonably subject to loss or damage from  
33 the same fire.

34 (3) Reinsurance in an alien reinsurer not qualified under RCW  
35 (~~48.05.300~~) 48.12.166 may not be deducted in determining risk  
36 retained for the purposes of this section.

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

6 (5) This section does not apply to life insurance, disability  
7 insurance, title insurance, or insurance of marine risks or marine  
8 protection and indemnity risks.

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

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

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

30 (b) The total exemption of benefits presently due and payable to  
31 (~~((any))~~) an annuitant periodically or at stated times under all annuity  
32 contracts (~~((under which he is an annuitant, shall))~~) may not at any time  
33 exceed two thousand five hundred (~~((and fifty))~~) dollars per month for  
34 the length of time represented by (~~((such))~~) the installments, and (~~((that~~  
35 ~~such))~~) a periodic payment in excess of two thousand five hundred (~~((and~~  
36 ~~fifty))~~) dollars per month (~~((shall be))~~) is subject to garnishee  
37 execution to the same extent as are wages and salaries.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

36           (1) It is a stock corporation.



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

4 (~~It deposits and keeps on deposit with the commissioner a~~  
5 ~~guaranty fund in amount as set forth in RCW 48.29.030 and comprised of~~  
6 ~~cash or public obligations as specified in RCW 48.13.040.~~) It has and  
7 maintains the capital and surplus requirements set forth in RCW  
8 48.05.340.

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

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

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

23 (3) ~~For the purposes of computing the special reserve fund as~~  
24 ~~provided in subsection (1) of this section, net increase of insurance~~  
25 ~~in force resulting from reinsurance of the risks of another title~~  
26 ~~insurer shall not be included to the extent that a like special reserve~~  
27 ~~fund on such insurance is maintained by the ceding insurer.)) In~~

28 determining the financial condition of a title insurer doing business  
29 under this title, the general provisions of chapter 48.12 RCW requiring  
30 the establishment of reserves sufficient to cover all known and unknown  
31 liabilities including allocated and unallocated loss adjustment expense  
32 apply, except that a title insurer shall establish and maintain:

33 (1) A known claim reserve in an amount estimated to be sufficient  
34 to cover all unpaid losses, claims, and allocated loss adjustment  
35 expenses arising under title insurance policies, guaranteed  
36 certificates of title, guaranteed searches, and guaranteed abstracts of  
37 title, and all unpaid losses, claims, and allocated loss adjustment

1 expenses for which the title insurer may be liable, and for which the  
2 insurer has received notice by or on behalf of the insured, holder of  
3 a guarantee or escrow, or security depositor;

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

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

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

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

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

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

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

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

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

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

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

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

37 (c) The insurer shall calculate an adjusted statutory unearned  
38 premium reserve as of the effective date of this section. The adjusted

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

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

	<u>Year of Addition</u>	<u>Release</u>
19		
20	<u>Year 1*</u>	<u>Equally over 10 years</u>
21	<u>Year 2</u>	<u>Equally over 9 years</u>
22	<u>Year 3</u>	<u>Equally over 8 years</u>
23	<u>Year 4</u>	<u>Equally over 7 years</u>
24	<u>Year 5</u>	<u>Equally over 6 years</u>
25	<u>Year 6</u>	<u>Equally over 5 years</u>

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

27 (3) A supplemental reserve shall be established consisting of any  
28 other reserves necessary, when taken in combination with the reserves  
29 required by subsections (1) and (2) of this section, to cover the  
30 company's liabilities with respect to all losses, claims, and loss  
31 adjustment expenses.

32 (4) The supplemental reserve required under subsection (3) of this  
33 section shall be phased in as follows: Twenty-five percent of the  
34 otherwise applicable supplemental reserve will be required until  
35 December 31, 2006; fifty percent of the otherwise applicable

1 supplemental reserve will be required until December 31, 2007; and  
2 seventy-five percent of the otherwise applicable supplemental reserve  
3 will be required until December 31, 2008.

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

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

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

12 (2) Other funds may be invested in:

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

15 (b) Stocks and bonds of abstract companies when approved by the  
16 commissioner.

17 (c) Investments eligible for the investment of funds of any  
18 domestic insurer.

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

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

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

27 Notwithstanding any provision contained in Title 48 RCW to the  
28 contrary:

29 ~~((1) No))~~ A person or entity engaged in the business of insurance  
30 in this state (~~((shall))~~) may not refuse to issue any contract of  
31 insurance or cancel or decline to renew such contract because of the  
32 sex or marital status, or the presence of any sensory, mental, or  
33 physical handicap of the insured or prospective insured. The amount of  
34 benefits payable, or any term, rate, condition, or type of coverage  
35 (~~((shall))~~) may not be restricted, modified, excluded, increased, or

1 reduced on the basis of the sex or marital status, or be restricted,  
2 modified, excluded, or reduced on the basis of the presence of any  
3 sensory, mental, or physical handicap of the insured or prospective  
4 insured. (~~Subject to the provisions of subsection (2) of this section~~  
5 ~~these provisions shall~~) This subsection does not prohibit fair  
6 discrimination on the basis of sex, or marital status, or the presence  
7 of any sensory, mental, or physical handicap when bona fide statistical  
8 differences in risk or exposure have been substantiated.

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

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

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

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

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

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

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

35 ~~(ii) Engage in a practice that subjects policyholders to rate~~  
36 ~~increases on discontinued policy forms unless such policyholders are~~  
37 ~~offered the opportunity to purchase comparable coverage without health~~  
38 ~~screening.~~

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

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

6       (1) Each insurer licensed to write direct insurance in this state,  
7 except those exempted in subsection (2) of this section, ~~((shall))~~ must  
8 institute and maintain an insurance antifraud plan. ~~((An insurer~~  
9 ~~licensed on July 1, 1995, shall file its antifraud plan with the~~  
10 ~~insurance commissioner no later than December 31, 1995.))~~ An insurer  
11 licensed after July 1, 1995, ~~((shall))~~ must file its antifraud plan  
12 within six months of licensure. An insurer ~~((shall))~~ must file any  
13 change to the antifraud plan with the insurance commissioner within  
14 thirty days after the plan has been modified.

15       (2) This section does not apply to:

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

17       (b) Life insurers((τ-ε));

18       (c) Title insurers; ((ε))

19       (d) Property or casualty insurers with annual gross written medical  
20 malpractice insurance premiums in this state that exceed fifty percent  
21 of their total annual gross written premiums in this state; ((ε-all))

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

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

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

30       By March 31st of each year, each insurer ((shall-annually)) must  
31 provide to the insurance commissioner a summary report on actions taken  
32 under its antifraud plan to prevent and combat insurance fraud. The  
33 report must also include, but not be limited to, measures taken to  
34 protect and ensure the integrity of electronic data processing-  
35 generated data and manually compiled data, statistical data on the  
36 amount of resources committed to combatting fraud, and the amount of

1 fraud identified and recovered during the reporting period. The  
2 antifraud plans and summary of the insurer's antifraud activities are  
3 not public records and are exempt from chapter 42.17 RCW, are  
4 proprietary, are not subject to public examination, and are not  
5 discoverable or admissible in civil litigation.

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

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

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

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

24 (2) Whenever a domiciliary receiver is appointed for (~~any such~~)  
25 a foreign or alien insurer in its domiciliary state (~~which~~) that is  
26 also a reciprocal state, as defined in RCW (~~48.31.110~~) 48.99.010, the  
27 court shall on application of the commissioner appoint the commissioner  
28 as the ancillary receiver in this state, subject to the provisions of  
29 the uniform insurers liquidation act.

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

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

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

- 1 (2) The amount of the annuity to be paid to the transferor or the  
2 transferor's nominee;
- 3 (3) The manner in which and the intervals at which payment is to be  
4 made;
- 5 (4) The age of the person during whose life payment is to be made;  
6 and
- 7 (5) The reasonable value as of the date of the agreement of the  
8 benefits (~~((thereby))~~) created. This value (~~((shall))~~) may not exceed by  
9 more than fifteen percent the net single premium for the benefits,  
10 determined (~~((in accordance with))~~) according to the standard of  
11 valuation set forth in RCW 48.38.020(~~((+1))~~) (3).

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

14 Each group contract for health care services (~~((which))~~) that is  
15 delivered or issued for delivery or renewed, on or after January 1,  
16 1988, (~~((shall))~~) must contain provisions providing benefits for the  
17 treatment of chemical dependency rendered to covered persons by a  
18 provider (~~((which))~~) that is an "approved treatment (~~((facility or))~~)  
19 program" under RCW 70.96A.020(3).

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

22 (1) An issuer may not deny or condition the issuance or  
23 effectiveness of any medicare supplement policy or certificate  
24 available for sale in this state, or discriminate in the pricing of a  
25 policy or certificate because of the health status, claims experience,  
26 receipt of health care, or medical condition of an applicant in the  
27 case of an application for a policy or certificate that is submitted  
28 prior to or during the six-month period beginning with the first day of  
29 the first month in which an individual is both sixty-five years of age  
30 or older and is enrolled for benefits under medicare part B. Each  
31 medicare supplement policy and certificate currently available from an  
32 insurer must be made available to all applicants who qualify under this  
33 subsection without regard to age.

34 (2) If an applicant qualifies under this section and submits an  
35 application during the time period referenced in subsection (1) of this



1 section and, as of the date of application, has had a continuous period  
2 of creditable coverage of at least six months, the issuer may not  
3 exclude benefits based on a preexisting condition.

4 (3) If an applicant qualified under this section and submits an  
5 application during the time period referenced in subsection (1) of this  
6 section and, as of the date of application, has had a continuous period  
7 of creditable coverage that is less than six months, the issuer must  
8 reduce the period of any preexisting condition exclusion by the  
9 aggregate of the period of creditable coverage applicable to the  
10 applicant as of the enrollment date.

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

13 Unless the context clearly requires otherwise, the definitions in  
14 this section apply throughout this chapter.

15 (1) "Medicare supplemental insurance" or "medicare supplement  
16 insurance policy" refers to a group or individual policy of disability  
17 insurance or a subscriber contract of a health care service contractor,  
18 a health maintenance organization, or a fraternal benefit society,  
19 which relates its benefits to medicare, or which is advertised,  
20 marketed, or designed primarily as a supplement to reimbursements under  
21 medicare for the hospital, medical, or surgical expenses of persons  
22 eligible for medicare. Such term does not include:

23 (a) A policy or contract of one or more employers or labor  
24 organizations, or of the trustees of a fund established by one or more  
25 employers or labor organizations, or combination thereof, for employees  
26 or former employees, or combination thereof, or for members or former  
27 members, or combination thereof, of the labor organizations; or

28 (b) A policy issued pursuant to a contract under Section 1876 of  
29 the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an  
30 issued policy under a demonstration specified in 42 U.S.C. Sec.  
31 1395(g)(1); or

32 (c) Insurance policies or health care benefit plans, including  
33 group conversion policies, provided to medicare eligible persons, that  
34 are not marketed or held to be medicare supplement policies or benefit  
35 plans.

36 (2) "Medicare" means the "Health Insurance for the Aged Act," Title

1 XVIII of the Social Security Amendments of 1965, as then constituted or  
2 later amended.

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

6 (4) "Applicant" means:

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

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

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

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

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

22 (8) "Disclosure form" means the form designated by the insurance  
23 commissioner which discloses medicare benefits, the supplemental  
24 benefits offered by the insurer, and the remaining amount for which the  
25 insured will be responsible.

26 (9) "Issuer" includes insurance companies, health care service  
27 contractors, health maintenance organizations, fraternal benefit  
28 societies, and any other entity delivering or issuing for delivery  
29 medicare supplement policies or certificates to a resident of this  
30 state.

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

33 (i) A group health plan;

34 (ii) Health insurance coverage;

35 (iii) Part A or Part B of Title XVIII of the social security act  
36 (medicare);

37 (iv) Title XIX of the social security act (medicaid), other than  
38 coverage consisting solely of benefits under section 1928;

- 1       (v) Chapter 55 of Title 10 United States Code (CHAMPUS);  
2       (vi) A medical care program of the Indian health service or of a  
3 tribal organization;  
4       (vii) A state health benefits risk pool;  
5       (viii) A health plan offered under chapter 89 of Title 5 United  
6 States Code (federal employees health benefits program);  
7       (ix) A public health plan as defined in federal regulation; and  
8       (x) A health benefit plan under section 5(e) of the peace corps act  
9 (22 U.S.C. Sec. 2504(e)).

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

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

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

- 27       (i) Limited scope dental or vision benefits;  
28       (ii) Benefits for long-term care, nursing home care, home health  
29 care, community-based care, or any combination thereof; and  
30       (iii) Other similar, limited benefits as are specified in federal  
31 regulations.

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

- 34       (i) Coverage only for a specified disease or illness; and  
35       (ii) Hospital indemnity or other fixed indemnity insurance.

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

1 (i) Medicare supplemental health insurance as defined under section  
2 1882(g)(1) of the social security act;

3 (ii) Coverage supplemental to the coverage provided under chapter  
4 55 of Title 10, United States Code; and

5 (iii) Similar supplemental coverage provided to coverage under a  
6 group health plan.

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

9 (1) Under this section, persons eligible for a medicare supplement  
10 policy or certificate are those individuals described in subsection (3)  
11 of this section who, subject to subsection (3)(b)(ii) of this section,  
12 apply to enroll under the policy not later than sixty-three days after  
13 the date of the termination of enrollment described in subsection (3)  
14 of this section, and who submit evidence of the date of termination or  
15 disenrollment with the application for a medicare supplement policy.

16 (2) With respect to eligible persons, an issuer may not deny or  
17 condition the issuance or effectiveness of a medicare supplement policy  
18 described in subsection (4) of this section that is offered and is  
19 available for issuance to new enrollees by the issuer, (~~shall~~) may  
20 not discriminate in the pricing of such a medicare supplement policy  
21 because of health status, claims experience, receipt of health care, or  
22 medical condition, and (~~shall~~) may not impose an exclusion of  
23 benefits based on a preexisting condition under such a medicare  
24 supplement policy.

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

28 (a) The individual is enrolled under an employee welfare benefit  
29 plan that provides health benefits that supplement the benefits under  
30 medicare; and the plan terminates, or the plan ceases to provide all  
31 such supplemental health benefits to the individual;

32 (b)(i) The individual is enrolled with a medicare+choice  
33 organization under a medicare+choice plan under part C of medicare, and  
34 any of the following circumstances apply, or the individual is sixty-  
35 five years of age or older and is enrolled with a program of all  
36 inclusive care for the elderly (PACE) provider under section 1894 of  
37 the social security act, and there are circumstances similar to those

1 described in this subsection (3)(b) that would permit discontinuance of  
2 the individual's enrollment with the provider if the individual were  
3 enrolled in a medicare+choice plan:

4 (A) The certification of the organization or plan under this  
5 subsection (3)(b) has been terminated, or the organization or plan has  
6 notified the individual of an impending termination of such a  
7 certification;

8 (B) The organization has terminated or otherwise discontinued  
9 providing the plan in the area in which the individual resides, or has  
10 notified the individual of an impending termination or discontinuance  
11 of such a plan;

12 (C) The individual is no longer eligible to elect the plan because  
13 of a change in the individual's place of residence or other change in  
14 circumstances specified by the secretary of the United States  
15 department of health and human services, but not including termination  
16 of the individual's enrollment on the basis described in section  
17 1851(g)(3)(B) of the federal social security act (where the individual  
18 has not paid premiums on a timely basis or has engaged in disruptive  
19 behavior as specified in standards under section 1856 of the federal  
20 social security act), or the plan is terminated for all individuals  
21 within a residence area;

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

25 (I) The organization offering the plan substantially violated a  
26 material provision of the organization's contract under this part in  
27 relation to the individual, including the failure to provide an  
28 enrollee on a timely basis medically necessary care for which benefits  
29 are available under the plan or the failure to provide such covered  
30 care in accordance with applicable quality standards; or

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

34 (E) The individual meets other exceptional conditions as the  
35 secretary of the United States department of health and human services  
36 may provide.

37 (ii)(A) An individual described in (b)(i) of this subsection may  
38 elect to apply (a) of this subsection by substituting, for the date of

1 termination of enrollment, the date on which the individual was  
2 notified by the medicare+choice organization of the impending  
3 termination or discontinuance of the medicare+choice plan it offers in  
4 the area in which the individual resides, but only if the individual  
5 disenrolls from the plan as a result of such notification.

6 (B) In the case of an individual making the election under  
7 (b)(ii)(A) of this subsection, the issuer involved shall accept the  
8 application of the individual submitted before the date of termination  
9 of enrollment, but the coverage under subsection (1) of this section  
10 (~~shall only become~~) is only effective upon termination of coverage  
11 under the medicare+choice plan involved;

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

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

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

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

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

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

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

25 (i)(A) Of the insolvency of the issuer or bankruptcy of the  
26 nonissuer organization; or

27 (B) Of other involuntary termination of coverage or enrollment  
28 under the policy;

29 (ii) The issuer of the policy substantially violated a material  
30 provision of the policy; or

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

34 (e)(i) The individual was enrolled under a medicare supplement  
35 policy and terminates enrollment and subsequently enrolls, for the  
36 first time, with any medicare+choice organization under a  
37 medicare+choice plan under part C of medicare, any eligible  
38 organization under a contract under section 1876 (medicare risk or

1 cost), any similar organization operating under demonstration project  
2 authority, any PACE program under section 1894 of the social security  
3 act, an organization under an agreement under section 1833(a)(1)(A)  
4 (health care prepayment plan), or a medicare select policy; and

5 (ii) The subsequent enrollment under (e)(i) of this subsection is  
6 terminated by the enrollee during any period within the first twelve  
7 months of such subsequent enrollment (during which the enrollee is  
8 permitted to terminate such subsequent enrollment under section 1851(e)  
9 of the federal social security act); or

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

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

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

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

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

27 (5)(a) At the time of an event described in subsection (3) of this  
28 section, and because of which an individual loses coverage or benefits  
29 due to the termination of a contract, agreement, policy, or plan, the  
30 organization that terminates the contract or agreement, the issuer  
31 terminating the policy, or the administrator of the plan being  
32 terminated, respectively, must notify the individual of his or her  
33 rights under this section, and of the obligations of issuers of  
34 medicare supplement policies under subsection (1) of this section. The  
35 notice must be communicated contemporaneously with the notification of  
36 termination.

37 (b) At the time of an event described in subsection (3) of this  
38 section, and because of which an individual ceases enrollment under a

1 contract, agreement, policy, or plan, the organization that offers the  
2 contract or agreement, regardless of the basis for the cessation of  
3 enrollment, the issuer offering the policy, or the administrator of the  
4 plan, respectively, must notify the individual of his or her rights  
5 under this section, and of the obligations of issuers of medicare  
6 supplement policies under subsection (1) of this section. The notice  
7 must be communicated within ten working days of the issuer receiving  
8 notification of disenrollment.

9 (6) In the case of an individual described in subsection (3)(e) of  
10 this section whose enrollment with an organization or provider  
11 described in subsection (3)(e)(i) of this section is involuntarily  
12 terminated within the first twelve months of enrollment, and who,  
13 without an intervening enrollment, enrolls with another organization or  
14 provider, the subsequent enrollment is an initial enrollment as  
15 described in subsection (3)(e) of this section.

16 (7) In the case of an individual described in subsection (3)(f) of  
17 this section whose enrollment with a plan or in a program described in  
18 subsection (3)(f) of this section is involuntarily terminated within  
19 the first twelve months of enrollment, and who, without an intervening  
20 enrollment, enrolls in another plan or program, the subsequent  
21 enrollment is an initial enrollment as described in subsection (3)(f)  
22 of this section.

23 (8) For purposes of subsection (3)(e) and (f) of this section, an  
24 enrollment of an individual with an organization or provider described  
25 in subsection (3)(e)(i) of this section, or with a plan or in a program  
26 described in subsection (3)(f) of this section is not an initial  
27 enrollment under this subsection after the two-year period beginning on  
28 the date on which the individual first enrolled with such an  
29 organization, provider, plan, or program.

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

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



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

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

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

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

24 (4) Every person licensed under chapters 48.15 and 48.17 RCW, on  
25 business placed with risk retention groups or written through a  
26 purchasing group, (~~(shall)~~) must inform each prospective insured of the  
27 provisions of the notice required under RCW 48.92.040(7) in the case of  
28 a risk retention group and RCW 48.92.090(~~(+3)~~) (2) in the case of a  
29 purchasing group.

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

32 (~~(No)~~) A managing general agent may not place business with an  
33 insurer unless there is in force a written contract between the  
34 managing general agent and the insurer that sets forth the  
35 responsibilities of each party and, where both parties share  
36 responsibility for a particular function, that specifies the division

1 of the responsibilities, and that contains the following minimum  
2 provisions:

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

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

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

17 (4) The managing general agent (~~shall~~) must maintain separate  
18 records of business written for each insurer. The insurer has access  
19 to and the right to copy all accounts and records related to its  
20 business in a form usable by the insurer, and the commissioner has  
21 access to all books, bank accounts, and records of the managing general  
22 agent in a form usable to the commissioner. Those records (~~shall~~)  
23 must be retained according to the requirements of this title and rules  
24 adopted under it.

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

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

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

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

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

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

3 (i) Has the potential to exceed an amount determined by the  
4 commissioner, or exceeds the limit set by the insurer, whichever is  
5 less;

6 (ii) Involves a coverage dispute;

7 (iii) May exceed the managing general agent's claims settlement  
8 authority;

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

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

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

17 (d) Settlement authority granted to the managing general agent may  
18 be terminated for cause upon the insurer's written notice to the  
19 managing general agent or upon the termination of the contract. The  
20 insurer may suspend the managing general agent's settlement authority  
21 during the pendency of a dispute regarding the cause for termination.

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

24 (9) If the contract provides for a sharing of interim profits by  
25 the managing general agent, and the managing general agent has the  
26 authority to determine the amount of the interim profits by  
27 establishing loss reserves or controlling claim payments or in any  
28 other manner, interim profits (~~shall~~) may not be paid to the managing  
29 general agent until one year after they are earned for property  
30 insurance business and five years after they are earned on casualty  
31 business and not until the profits have been verified under RCW  
32 48.98.020.

33 (10) The managing general agent may not:

34 (a) Bind reinsurance or retrocessions on behalf of the insurer,  
35 except that the managing general agent may bind automatic reinsurance  
36 contracts under obligatory automatic agreements if the contract with  
37 the insurer contains reinsurance underwriting guidelines including, for

1 both reinsurance assumed and ceded, a list of reinsurers with which the  
2 automatic agreements are in effect, the coverages and amounts or  
3 percentages that may be reinsured, and commission schedules;

4 (b) Commit the insurer to participate in insurance or reinsurance  
5 syndicates;

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

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

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

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

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

19 (h) Appoint a submanaging general agent.

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

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

24 (2) RCW 48.29.030 (Amount of deposit) and 1957 c 193 s 16 & 1947 c  
25 79 s .29.03;

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

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

29 (5) RCW 48.29.090 (Purpose of deposit) and 1955 c 86 s 16 & 1947 c  
30 79 s .29.09;

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

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

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

--- END ---