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**SUBSTITUTE HOUSE BILL 3042**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Santos, Cairnes, Roach, Sullivan, Wallace, Ormsby, D. Simpson, Chase, Benson, Carrell, Newhouse, G. Simpson, Cooper, Schual-Berke, Hatfield, Kagi and Upthegrove)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to authorizing certain entities to participate in  
2 self-insurance risk pools; amending RCW 48.01.050; adding a new chapter  
3 to Title 48 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This chapter is intended to provide the  
6 exclusive source of authority to an adult family home to individually  
7 or jointly self-insure risks, jointly purchase insurance or  
8 reinsurance, and to contract for risk management, claims, and  
9 administrative services. However, adult family homes may not  
10 participate in any activity or program authorized under this chapter in  
11 violation of Article VIII, section 5 or 7 of the state Constitution.  
12 This chapter shall be liberally construed to grant adult family homes  
13 maximum flexibility in self-insuring to the extent the self-insurance  
14 programs are operated in a safe and sound manner. This chapter is  
15 intended to require prior approval for the establishment of every  
16 individual adult family home self-insured employee health and welfare  
17 benefit program and every adult family home self-insurance program.  
18 This chapter is not intended to authorize or regulate self-insurance of

1 unemployment compensation under chapter 50.44 RCW, or industrial  
2 insurance under chapter 51.14 RCW.

3 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
4 otherwise, the definitions in this section apply throughout this  
5 chapter.

6 (1) "Risk assumption" means a decision to absorb the entity's  
7 financial exposure to a risk of loss without the creation of a formal  
8 program of advance funding of anticipated losses.

9 (2) "Self-insurance" means a formal program of advance funding and  
10 management of entity financial exposure to a risk of loss that is not  
11 transferred through the purchase of an insurance policy or contract.

12 (3) "Health and welfare benefits" means a plan or program  
13 established by an adult family home for the purpose of providing its  
14 employees and their dependents with health care, accident, disability,  
15 death, and salary protection benefits.

16 (4) "Property and liability risks" includes the risk of property  
17 damage or loss sustained by an adult family home and the risk of claims  
18 arising from the tortious or negligent conduct or any error or omission  
19 of the adult family home, its officers, employees, agents, or  
20 volunteers as a result of which a claim may be made against the adult  
21 family home.

22 (5) "Adult family home" has the same meaning as in RCW  
23 70.128.010(1), which is licensed pursuant to RCW 70.128.050.

24 NEW SECTION. **Sec. 3.** (1) The governing body of an adult family  
25 home may individually self-insure, may join or form a self-insurance  
26 program together with other adult family homes, and may jointly  
27 purchase insurance or reinsurance with other entities or adult family  
28 homes for property and liability risks, and health and welfare benefits  
29 only as permitted under this chapter. In addition, the entity or  
30 entities may contract for or hire personnel to provide risk management,  
31 claims, and administrative services in accordance with this chapter.

32 (2) Every individual and joint self-insurance program is subject to  
33 audit by the state auditor.

34 (3) If provided for in the agreement or contract, a joint self-  
35 insurance program may, in conformance with this chapter:

1 (a) Contract or otherwise provide for risk management and loss  
2 control services;

3 (b) Contract or otherwise provide legal counsel for the defense of  
4 claims and other legal services;

5 (c) Consult with the state insurance commissioner;

6 (d) Jointly purchase insurance and reinsurance coverage in such  
7 form and amount as the program's participants agree by contract; and

8 (e) Possess any other powers and perform all other functions  
9 reasonably necessary to carry out the purposes of this chapter.

10 (4) An adult family home that has decided to assume a risk of loss  
11 must have available for inspection by the state auditor a written  
12 report indicating the class of risk or risks the governing body of the  
13 adult family home has decided to assume.

14 (5) Every joint self-insurance program governed by this chapter  
15 shall appoint the commissioner as its attorney to receive service of,  
16 and upon whom shall be served, all legal process issued against it in  
17 this state upon causes of action arising in this state.

18 (a) Service upon the commissioner as attorney shall constitute  
19 service upon the program. Service upon joint insurance programs can be  
20 had only by service upon the commissioner. At the time of service, the  
21 plaintiff shall pay to the commissioner a fee to be set by the  
22 commissioner, taxable as costs in the action.

23 (b) With the initial filing for approval with the commissioner,  
24 each joint self-insurance program shall designate by name and address  
25 the person to whom the commissioner shall forward legal process so  
26 served upon him or her. The joint self-insurance program may change  
27 such person by filing a new designation.

28 (c) The appointment of the commissioner as attorney shall be  
29 irrevocable, shall bind any successor in interest or to the assets or  
30 liabilities of the joint self-insurance program, and shall remain in  
31 effect as long as there is in force in this state any contract made by  
32 the joint self-insurance program or liabilities or duties arising  
33 therefrom.

34 (d) The commissioner shall keep a record of the day and hour of  
35 service upon him or her of all legal process. A copy of the process,  
36 by registered mail with return receipt requested, shall be sent by the  
37 commissioner, to the person designated for the purpose by the joint  
38 self-insurance program in its most recent such designation filed with

1 the commissioner. No proceedings may be had against the joint self-  
2 insurance program, and the program may not be required to appear,  
3 plead, or answer, until the expiration of forty days after the date of  
4 service upon the commissioner.

5 NEW SECTION. **Sec. 4.** The commissioner, in consultation with the  
6 property and liability advisory board, shall adopt rules governing the  
7 management and operation of both individual and joint adult family home  
8 self-insurance programs covering property or liability risks. The  
9 commissioner shall also adopt rules governing the management and  
10 operation of both individual and joint adult family home self-insured  
11 health and welfare benefits programs in consultation with the health  
12 and welfare benefits advisory board. All rules shall be appropriate  
13 for the type of program and class of risk covered. The commissioner's  
14 rules shall include:

15 (1) Standards for the management, operation, and solvency of self-  
16 insurance programs, including the necessity and frequency of actuarial  
17 analyses and claims audits;

18 (2) Standards for claims management procedures; and

19 (3) Standards for contracts between self-insurance programs and  
20 private businesses including standards for contracts between third-  
21 party administrators and programs.

22 NEW SECTION. **Sec. 5.** Before the establishment of a joint self-  
23 insurance program covering property or liability risks by adult family  
24 homes, or an individual or joint adult family home self-insured health  
25 and welfare benefits program, the adult family home or adult family  
26 homes must obtain the approval of the commissioner. The commissioner's  
27 approval is not required for the establishment of an individual adult  
28 family home self-insurance program covering property or liability  
29 risks. The adult family home or adult family homes proposing creation  
30 of a self-insurance program requiring prior approval shall submit a  
31 plan of management and operation to the commissioner and the state  
32 auditor that provides at least the following information:

33 (1) The risk or risks to be covered, including any coverage  
34 definitions, terms, conditions, and limitations or in the case of  
35 health and welfare benefits programs, the benefits to be provided,  
36 including any benefit definitions, terms, conditions, and limitations;

- 1 (2) The amount and method of financing the benefits or covered  
2 risks, including the initial capital and proposed rates and projected  
3 premiums;
- 4 (3) The proposed claim reserving practices;
- 5 (4) The proposed purchase and maintenance of insurance or  
6 reinsurance in excess of the amounts retained by the self-insurance  
7 program;
- 8 (5) In the case of a joint program, the legal form of the program,  
9 including but not limited to any bylaws, charter, or trust agreement;
- 10 (6) In the case of a joint program, the agreements with members of  
11 the program defining the responsibilities and benefits of each member  
12 and management;
- 13 (7) The proposed accounting, depositing, and investment practices  
14 of the program;
- 15 (8) The proposed time when actuarial analysis will be first  
16 conducted and the frequency of future actuarial analysis;
- 17 (9) A designation of the individual upon whom service of process  
18 shall be executed on behalf of the program. In the case of a joint  
19 program, a designation of the individual to whom service of process  
20 shall be forwarded by the commissioner on behalf of the program;
- 21 (10) All contracts between the program and private persons  
22 providing risk management, claims, or other administrative services;
- 23 (11) A professional analysis of the feasibility of creation and  
24 maintenance of the program; and
- 25 (12) Any other information required by rule of the commissioner  
26 that is necessary to determine the probable financial and management  
27 success of the program or that is necessary to determine compliance  
28 with this chapter.

29 NEW SECTION. **Sec. 6.** An adult family home may participate in a  
30 joint self-insurance program covering property or liability risks with  
31 similar adult family homes from other states if the program satisfies  
32 the following requirements:

- 33 (1) Only those adult family homes of this state and similar adult  
34 family homes of other states that are provided insurance by the program  
35 may have ownership interest in the program;
- 36 (2) The participating adult family homes of this state and other

1 states shall elect a board of directors to manage the program, a  
2 majority of whom shall be affiliated with one or more of the  
3 participating adult family homes;

4 (3) The program must provide coverage through the delivery to each  
5 participating adult family home of one or more written policies  
6 effecting insurance of covered risks;

7 (4) The program shall be financed, including the payment of  
8 premiums and the contribution of initial capital, in accordance with  
9 the plan of management and operation submitted to the commissioner in  
10 accordance with this chapter;

11 (5) The financial statements of the program shall be audited  
12 annually by the certified public accountants for the program, and such  
13 audited financial statements shall be delivered to the Washington state  
14 auditor and the commissioner not more than one hundred twenty days  
15 after the end of each fiscal year of the program;

16 (6) The investments of the program shall be initiated only with  
17 financial institutions and/or broker-dealers doing business in those  
18 states in which participating adult family homes are located, and such  
19 investments shall be audited annually by the certified public  
20 accountants for the program, and a list of such investments shall be  
21 delivered to the Washington state auditor not more than one hundred  
22 twenty days after the end of each fiscal year of the program;

23 (7) The treasurer of a multistate joint self-insurance program  
24 shall be designated by resolution of the program and such treasurer  
25 shall be located in the state of one of the participating adult family  
26 homes;

27 (8) The participating adult family homes may have no contingent  
28 liabilities for covered claims, other than liabilities for unpaid  
29 premiums, retrospective premiums, or assessments, if assets of the  
30 program are insufficient to cover the program's liabilities; and

31 (9) The program shall obtain approval from the commissioner in  
32 accordance with this chapter and shall remain in compliance with the  
33 provisions of this chapter, except to the extent that such provisions  
34 are modified by or inconsistent with this section.

35 NEW SECTION. **Sec. 7.** (1) Within one hundred twenty days of  
36 receipt of a plan of management and operation, the commissioner shall  
37 either approve or disapprove the formation of the self-insurance

1 program after reviewing the plan to determine whether the proposed  
2 program complies with this chapter and all rules adopted in accordance  
3 with this chapter.

4 (2) If the commissioner denies a request for approval, the  
5 commissioner shall specify in detail the reasons for denial and the  
6 manner in which the program fails to meet the requirements of this  
7 chapter or any rules adopted in accordance with this chapter.

8 (3) Whenever the commissioner determines that a joint self-  
9 insurance program covering property or liability risks or an individual  
10 or joint self-insured health and welfare benefits program is in  
11 violation of this chapter or is operating in an unsafe financial  
12 condition, the commissioner may issue and serve upon the program an  
13 order to cease and desist from the violation or practice.

14 (a) The commissioner shall deliver the order to the appropriate  
15 adult family home or adult family homes directly or mail it to the  
16 appropriate adult family home or adult family homes by registered mail  
17 with return receipt requested.

18 (b) If the program violates the order or has not taken steps to  
19 comply with the order after the expiration of twenty days after the  
20 cease and desist order has been received by the program, the program is  
21 deemed to be operating in violation of this chapter, and the  
22 commissioner shall notify the state auditor and the attorney general of  
23 the violation.

24 (c) After hearing or with the consent of a program governed by this  
25 chapter and in addition to or in lieu of a continuation of the cease  
26 and desist order, the commissioner may levy a fine upon the program in  
27 an amount not less than three hundred dollars and not more than ten  
28 thousand dollars. The order levying such fine shall specify the period  
29 within which the fine shall be fully paid. The period within which  
30 such fines shall be paid shall not be less than fifteen nor more than  
31 thirty days from the date of such order. Upon failure to pay any such  
32 fine when due the commissioner shall request the attorney general to  
33 bring a civil action on the commissioner's behalf to collect the fine.  
34 The commissioner shall pay any fine so collected to the state treasurer  
35 for the account of the general fund.

36 (4) Each self-insurance program approved by the commissioner shall  
37 annually file a report with the commissioner and state auditor  
38 providing:

- 1 (a) Details of any changes in the articles of incorporation,  
2 bylaws, or interlocal agreement;
- 3 (b) Copies of all the insurance coverage documents;
- 4 (c) A description of the program structure, including participants'  
5 retention, program retention, and excess insurance limits and  
6 attachment point;
- 7 (d) An actuarial analysis, if required;
- 8 (e) A list of contractors and service providers;
- 9 (f) The financial and loss experience of the program; and
- 10 (g) Such other information as required by rule of the commissioner.
- 11 (5) No self-insurance program requiring the commissioner's approval  
12 may engage in an act or practice that in any respect significantly  
13 differs from the management and operation plan that formed the basis  
14 for the commissioner's approval of the program unless the program first  
15 notifies the commissioner in writing and obtains the commissioner's  
16 approval. The commissioner shall approve or disapprove the proposed  
17 change within sixty days of receipt of the notice. If the commissioner  
18 denies a requested change, the commissioner shall specify in detail the  
19 reasons for denial and the manner in which the program would fail to  
20 meet the requirements of this chapter or any rules adopted in  
21 accordance with this chapter.

22 **Sec. 8.** RCW 48.01.050 and 2003 c 248 s 1 are each amended to read  
23 as follows:

24 "Insurer" as used in this code includes every person engaged in the  
25 business of making contracts of insurance, other than a fraternal  
26 benefit society. A reciprocal or interinsurance exchange is an  
27 "insurer" as used in this code. Two or more hospitals that join and  
28 organize as a mutual corporation pursuant to chapter 24.06 RCW for the  
29 purpose of insuring or self-insuring against liability claims,  
30 including medical liability, through a contributing trust fund are not  
31 an "insurer" under this code. Two or more local governmental  
32 entities(~~(, under any provision of law)~~) or two or more adult family  
33 homes as defined in RCW 70.128.010(1), which are licensed pursuant to  
34 RCW 70.128.050, that join together and organize to form an organization  
35 for the purpose of jointly self-insuring or self-funding are not an  
36 "insurer" under this code. Two or more persons engaged in the business  
37 of commercial fishing who enter into an arrangement with other such



1 persons for the pooling of funds to pay claims or losses arising out of  
2 loss or damage to a vessel or machinery used in the business of  
3 commercial fishing and owned by a member of the pool are not an  
4 "insurer" under this code.

5 NEW SECTION. **Sec. 9.** The commissioner may adopt rules as  
6 necessary to implement this chapter.

7 NEW SECTION. **Sec. 10.** Sections 1 through 7 and 9 of this act  
8 constitute a new chapter in Title 48 RCW.

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