
SENATE BILL 5641

State of Washington

58th Legislature

2003 Regular Session

By Senators Benton, Prentice and Winsley; by request of Insurance Commissioner

Read first time 02/04/2003. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to civil and criminal penalties for the unlawful
2 transaction of insurance or health coverage; amending RCW 48.15.020,
3 48.17.060, 48.44.015, 48.44.060, 48.46.027, and 48.46.420; adding a new
4 section to chapter 48.15 RCW; adding new sections to chapter 48.17 RCW;
5 adding a new section to chapter 48.44 RCW; adding a new section to
6 chapter 48.46 RCW; and prescribing penalties.

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

8 **Sec. 1.** RCW 48.15.020 and 1992 c 149 s 1 are each amended to read
9 as follows:

10 (1) An insurer (~~((not thereunto))~~) that is not authorized by the
11 commissioner (~~((shall))~~) may not solicit insurance business in this
12 state(~~((, nor))~~) or transact insurance business in this state, except as
13 provided in this chapter.

14 (2)(a) (~~((No))~~) A person (~~((shall))~~) may not, in this state, represent
15 an unauthorized insurer except as provided in this chapter. This
16 (~~((provision shall))~~) subsection not apply to any adjuster or attorney at
17 law representing (~~((such))~~) an unauthorized insurer from time to time in
18 this state in his or her professional capacity.

1 (b) A person, other than a duly licensed surplus line broker acting
2 in good faith under his or her license, who makes a contract of
3 insurance in this state, directly or indirectly, on behalf of an
4 unauthorized insurer, without complying with the provisions of this
5 chapter, is personally liable for the performance of such contract.

6 (3) Each violation of subsection (2) of this section shall
7 constitute a separate offense punishable by a fine of not more than
8 twenty-five thousand dollars, and the commissioner, at the
9 commissioner's discretion, may order replacement of policies improperly
10 placed with an unauthorized insurer with policies issued by an
11 authorized insurer. Violations may result in suspension or revocation
12 of a license.

13 NEW SECTION. Sec. 2. A new section is added to chapter 48.15 RCW
14 to read as follows:

15 (1) As used in this section, "person" has the same meaning as in
16 RCW 48.01.070.

17 (2) For the purpose of this section, an act is committed in this
18 state if it is committed, in whole or in part, in the state of
19 Washington, or affects persons or property within the state and relates
20 to or involves an insurance contract.

21 (3) Any person who knowingly solicits insurance business in this
22 state or transacts insurance business in this state in violation of RCW
23 48.15.020(1) is guilty of a class B felony as provided in chapter 9A.20
24 RCW.

25 (4) Any person who attempts or conspires to violate subsection (3)
26 of this section is guilty of a class C felony as provided in chapter
27 9A.20 RCW.

28 (5) Any criminal penalty imposed under this section is in addition
29 to, and not in lieu of, any other civil or administrative penalty or
30 sanction otherwise authorized under state law.

31 (6)(a) If the commissioner has cause to believe that any person has
32 violated the provisions of RCW 48.15.020(1), the commissioner may:

33 (i) Issue and enforce a cease and desist order in accordance with
34 the provisions of RCW 48.02.080; or

35 (ii) Assess a civil penalty of not more than twenty-five thousand
36 dollars for each violation, after providing notice and an opportunity
37 for a hearing in accordance with chapters 34.05 and 48.04 RCW.

1 (b) Upon failure to pay a civil penalty when due, the attorney
2 general may bring a civil action on behalf of the commissioner to
3 recover the unpaid penalty. Any amounts collected by the commissioner
4 must be paid to the state treasurer for the account of the general
5 fund.

6 **Sec. 3.** RCW 48.17.060 and 1995 c 214 s 1 are each amended to read
7 as follows:

8 (1) ~~((No))~~ A person ~~((shall in this state))~~ may not act as or hold
9 himself or herself out to be an agent, broker, solicitor, or adjuster
10 in this state unless ~~((then))~~ licensed ~~((therefor by this state))~~ by
11 the commissioner.

12 (2) ~~((No))~~ An agent, solicitor, or broker ~~((shall))~~ may not solicit
13 or take applications for, procure, or place for others any kind of
14 insurance for which he or she is not then licensed.

15 (3) This section ~~((shall))~~ does not apply with respect to any
16 person securing and forwarding information required for the purposes of
17 group credit life and credit disability insurance or credit casualty
18 insurance against loss or damage resulting from failure of debtors to
19 pay their obligations in connection with an extension of credit and
20 such other credit life and disability insurance or credit casualty
21 insurance against loss or damage resulting from failure of debtors to
22 pay their obligations as the commissioner shall determine, and where no
23 commission or other compensation is payable on account of the securing
24 and forwarding of such information. However, the reimbursement of a
25 creditor's actual expenses for securing and forwarding information
26 required for the purposes of such group insurance ~~((shall))~~ will not be
27 considered a commission or other compensation if such reimbursement
28 does not exceed three dollars per certificate issued, or in the case of
29 a monthly premium plan extending beyond twelve months, not to exceed
30 three dollars per loan transaction revision per year.

31 (4) Any person violating subsection (3) of this section ~~((shall be~~
32 ~~liable))~~ is subject to a fine of not ~~((to exceed))~~ more than five
33 hundred dollars and imprisonment for not ~~((to exceed))~~ more than six
34 months for each ~~((instance of such))~~ violation.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.17 RCW
36 to read as follows:

1 (1) As used in this section, "person" has the same meaning as in
2 RCW 48.01.070.

3 (2) For the purpose of this section, an act is committed in this
4 state if it is committed, in whole or in part, in the state of
5 Washington, or affects persons or property within the state and relates
6 to or involves an insurance contract, health care services contract, or
7 health maintenance agreement.

8 (3) Any person who knowingly violates the provisions of RCW
9 48.17.060 (1) or (2) is guilty of a class B felony as provided in
10 chapter 9A.20 RCW.

11 (4) Any person who attempts or conspires to violate the provisions
12 of RCW 48.17.060 (1) or (2) is guilty of a class C felony as provided
13 in chapter 9A.20 RCW.

14 (5) Any criminal penalty imposed under this section is in addition
15 to, and not in lieu of, any other civil or administrative penalty or
16 sanction otherwise authorized under state law.

17 (6)(a) If the commissioner has cause to believe that any person has
18 violated the provisions of RCW 48.17.060 (1) or (2), the commissioner
19 may:

20 (i) Issue and enforce a cease and desist order in accordance with
21 the provisions of RCW 48.02.080;

22 (ii) Suspend or revoke a license; or

23 (iii) Assess a civil penalty of not more than twenty-five thousand
24 dollars for each violation, after providing notice and an opportunity
25 for a hearing in accordance with chapters 34.05 and 48.04 RCW.

26 (b) Upon failure to pay a civil penalty when due, the attorney
27 general may bring a civil action on behalf of the commissioner to
28 recover the unpaid penalty. Any amounts collected by the commissioner
29 must be paid to the state treasurer for the account of the general
30 fund.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.17 RCW
32 to read as follows:

33 (1) Any solicitor, agent, or broker soliciting, negotiating, or
34 procuring an application for insurance or health care services in this
35 state must make a good faith effort to determine whether the entity
36 that is issuing the coverage is:

1 (a) Authorized to transact insurance or health coverage in this
2 state; or

3 (b) Conducting business through a surplus lines broker licensed
4 under chapter 48.15 RCW.

5 (2) Any person investigating or adjusting a loss or claim on a
6 subject of insurance in this state must make a good faith effort to
7 determine whether the entity that has issued the coverage is:

8 (a) Authorized to transact insurance or health coverage in this
9 state; or

10 (b) Conducting business through a surplus lines broker licensed
11 under chapter 48.15 RCW.

12 **Sec. 6.** RCW 48.44.015 and 1983 c 202 s 2 are each amended to read
13 as follows:

14 (1) ~~((No))~~ A person ~~((shall))~~ may not in this state, by mail or
15 otherwise, act as or hold himself or herself out to be a health care
16 service contractor, as defined in RCW 48.44.010 without first being
17 ~~((duly))~~ registered ~~((therefor))~~ with the commissioner.

18 (2) The issuance, sale, or offer for sale in this state of
19 securities of its own issue by any health care service contractor
20 domiciled in this state other than the memberships and bonds of a
21 nonprofit corporation shall be subject to the provisions of chapter
22 48.06 RCW relating to obtaining solicitation permits the same as if
23 health care service contractors were domestic insurers.

24 (3) Any person violating any provision of subsection ~~((1))~~ (2)
25 of this section ~~((shall be liable))~~ is subject to a fine of not ~~((to~~
26 ~~exceed))~~ more than one thousand dollars and imprisonment for not ~~((to~~
27 ~~exceed))~~ more than six months for each ~~((instance of such))~~ violation.

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.44 RCW
29 to read as follows:

30 (1) As used in this section, "person" has the same meaning as in
31 RCW 48.01.070.

32 (2) For the purpose of this section, an act is committed in this
33 state if it is committed, in whole or in part, in the state of
34 Washington, or affects persons or property within the state and relates
35 to or involves a health care services contract.

1 (3) Any person who knowingly violates the provisions of RCW
2 48.44.015(1) is guilty of a class B felony as provided in chapter 9A.20
3 RCW.

4 (4) Any person who attempts or conspires to violate the provisions
5 of RCW 48.44.015(1) is guilty of a class C felony as provided in
6 chapter 9A.20 RCW.

7 (5) Any criminal penalty imposed under this section is in addition
8 to, and not in lieu of, any other civil or administrative penalty or
9 sanction otherwise authorized under state law.

10 (6)(a) If the commissioner has cause to believe that any person has
11 violated the provisions of RCW 48.44.015(1), the commissioner may:

12 (i) Issue and enforce a cease and desist order in accordance with
13 the provisions of RCW 48.02.080; or

14 (ii) Assess a civil penalty of not more than twenty-five thousand
15 dollars for each violation, after providing notice and an opportunity
16 for a hearing in accordance with chapters 34.05 and 48.04 RCW.

17 (b) Upon failure to pay a civil penalty when due, the attorney
18 general may bring a civil action on behalf of the commissioner to
19 recover the unpaid penalty. Any amounts collected by the commissioner
20 must be paid to the state treasurer for the account of the general
21 fund.

22 **Sec. 8.** RCW 48.44.060 and 1947 c 268 s 6 are each amended to read
23 as follows:

24 Except as otherwise provided in this chapter, any person who
25 violates any of the provisions of this chapter ((shall be)) is guilty
26 of a gross misdemeanor.

27 **Sec. 9.** RCW 48.46.027 and 1983 c 202 s 9 are each amended to read
28 as follows:

29 (1) ((No)) A person ((shall)) may not in this state, by mail or
30 otherwise, act as or hold himself or herself out to be a health
31 maintenance organization as defined in RCW 48.46.020 without first
32 being ((duly)) registered ((therefor)) with the commissioner.

33 (2) The issuance, sale, or offer for sale in this state of
34 securities of its own issue by any health maintenance organization
35 domiciled in this state other than the memberships and bonds of a

1 nonprofit corporation (~~shall be~~) is subject to the provisions of
2 chapter 48.06 RCW relating to obtaining solicitation permits the same
3 as if health maintenance organizations were domestic insurers.

4 (3) Any person violating any provision of subsection (~~(1) or~~) (2)
5 of this section (~~shall be liable~~) is subject to a fine of not (~~to~~
6 ~~exceed~~) more than one thousand dollars and imprisonment for not (~~to~~
7 ~~exceed~~) more than six months for each (~~instance of such~~) violation.

8 NEW SECTION. Sec. 10. A new section is added to chapter 48.46 RCW
9 to read as follows:

10 (1) As used in this section, "person" has the same meaning as in
11 RCW 48.01.070.

12 (2) For the purpose of this section, an act is committed in this
13 state if it is committed, in whole or in part, in the state of
14 Washington, or affects persons or property within the state and relates
15 to or involves a health maintenance agreement.

16 (3) Any person who knowingly violates the provisions of RCW
17 48.46.027(1) is guilty of a class B felony as provided in chapter 9A.20
18 RCW.

19 (4) Any person who attempts or conspires to violate the provisions
20 of RCW 48.46.027(1) is guilty of a class C felony as provided in
21 chapter 9A.20 RCW.

22 (5) Any criminal penalty imposed under this section is in addition
23 to, and not in lieu of, any other civil or administrative penalty or
24 sanction otherwise authorized under state law.

25 (6)(a) If the commissioner has cause to believe that any person has
26 violated the provisions of RCW 48.46.027(1), the commissioner may:

27 (i) Issue and enforce a cease and desist order in accordance with
28 the provisions of RCW 48.02.080; or

29 (ii) Assess a civil penalty of not more than twenty-five thousand
30 dollars for each violation, after providing notice and an opportunity
31 for a hearing in accordance with chapters 34.05 and 48.04 RCW.

32 (b) Upon failure to pay a civil penalty when due, the attorney
33 general may bring a civil action on behalf of the commissioner to
34 recover the unpaid penalty. Any amounts collected by the commissioner
35 must be paid to the state treasurer for the account of the general
36 fund.

1 **Sec. 11.** RCW 48.46.420 and 1990 c 119 s 10 are each amended to
2 read as follows:

3 (1) Except as otherwise provided in this chapter, any health
4 maintenance organization which, or person who, violates any provision
5 of this chapter (~~shall be~~) is guilty of a gross misdemeanor.

6 (2) A health maintenance organization that fails to comply with the
7 net worth requirements of this chapter must cure that defect in
8 compliance with an order of the commissioner rendered in conformity
9 with rules adopted pursuant to chapter 34.05 RCW. The commissioner is
10 authorized to take appropriate action to assure that the continued
11 operation of the health maintenance organization will not be hazardous
12 to its enrolled participants.

13 NEW SECTION. **Sec. 12.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

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