

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1034

59th Legislature
2005 Regular Session

Passed by the House April 18, 2005
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 11, 2005
Yeas 42 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1034** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1034

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington **59th Legislature** **2005 Regular Session**

By Representatives Kirby, Roach and Simpson; by request of Insurance Commissioner

Read first time 01/11/2005. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the administrative supervision of financially
2 distressed insurers; amending RCW 48.31.020 and 48.31.115; and adding
3 new sections to chapter 48.31 RCW.

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

5 **Sec. 1.** RCW 48.31.020 and 1998 c 284 s 8 are each amended to read
6 as follows:

7 (1) For the purposes of this chapter, other than as to RCW
8 48.31.010, and in addition to persons included under RCW 48.99.010, the
9 term "insurer" shall be deemed to include an insurer authorized under
10 chapter 48.05 RCW, an insurer or institution holding a certificate of
11 exemption under RCW 48.38.010, a health care service contractor
12 registered under chapter 48.44 RCW, and a health maintenance
13 organization registered under chapter 48.46 RCW, as well as all persons
14 engaged as, or purporting to be engaged as insurers, institutions
15 issuing charitable gift annuities, health care service contractors, or
16 health maintenance organizations in this state, and to persons in
17 process of organization to become insurers, institutions issuing
18 charitable gift annuities, health care service contractors, or health
19 maintenance organizations.

1 (2) The definitions in this subsection apply throughout this
2 chapter unless the context clearly requires otherwise.

3 (a) "Exceeded its powers" means the following conditions:

4 (i) The insurer has refused to permit examination of its books,
5 papers, accounts, records, or affairs by the commissioner, his or her
6 deputies, employees, or duly commissioned examiners as required by this
7 title or any rules adopted by the commissioner;

8 (ii) A domestic insurer has unlawfully removed from this state
9 books, papers, accounts, or records necessary for an examination of the
10 insurer;

11 (iii) The insurer has failed to promptly comply with the filing of
12 any applicable financial reports as required by this title or any rules
13 adopted by the commissioner;

14 (iv) The insurer has neglected or refused to observe a lawful order
15 of the commissioner to comply, within the time prescribed by law, with
16 any prohibited deficiency in its applicable capital, capital stock, or
17 surplus;

18 (v) The insurer is continuing to transact insurance or write
19 business after its license has been revoked or suspended by the
20 commissioner;

21 (vi) The insurer, by contract or otherwise, has unlawfully or has
22 in violation of an order of the commissioner or with respect to a
23 transaction to which the insurer has without first having obtained
24 written approval of the commissioner if approval is required by law:

25 (A) Totally reinsured its entire outstanding business; or

26 (B) Merged or consolidated substantially its entire property or
27 business with another insurer; or

28 (vii) The insurer engaged in any transaction in which it is not
29 authorized to engage under this title or any rules adopted by the
30 commissioner.

31 (b) "Consent" means agreement to administrative supervision by the
32 insurer.

33 **Sec. 2.** RCW 48.31.115 and 1993 c 462 s 60 are each amended to read
34 as follows:

35 (1) The persons entitled to protection under this section are:

36 (a) The commissioner and any other receiver or administrative

1 supervisor responsible for conducting a delinquency proceeding under
2 this chapter, including present and former commissioners,
3 administrative supervisors, and receivers; and

4 (b) The commissioner's employees, meaning all present and former
5 special deputies and assistant special deputies and special receivers
6 and special administrative supervisors appointed by the commissioner
7 and all persons whom the commissioner, special deputies, or assistant
8 special deputies have employed to assist in a delinquency proceeding
9 under this chapter. Attorneys, accountants, auditors, and other
10 professional persons or firms who are retained as independent
11 contractors, and their employees, are not considered employees of the
12 commissioner for purposes of this section.

13 (2) The commissioner and the commissioner's employees are immune
14 from suit and liability, both personally and in their official
15 capacities, for a claim for damage to or loss of property or personal
16 injury or other civil liability caused by or resulting from an alleged
17 act or omission of the commissioner or an employee arising out of or by
18 reason of his or her duties or employment. However, nothing in this
19 subsection may be construed to hold the commissioner or an employee
20 immune from suit or liability for any damage, loss, injury, or
21 liability caused by the intentional or willful and wanton misconduct of
22 the commissioner or an employee.

23 (3) If a legal action is commenced against the commissioner or an
24 employee, whether against him or her personally or in his or her
25 official capacity, alleging property damage, property loss, personal
26 injury, or other civil liability caused by or resulting from an alleged
27 act or omission of the commissioner or an employee arising out of or by
28 reason of his or her duties or employment, the commissioner and any
29 employee shall be indemnified from the assets of the insurer for all
30 expenses, attorneys' fees, judgments, settlements, decrees, or amounts
31 due and owing or paid in satisfaction of or incurred in the defense of
32 the legal action unless it is determined upon a final adjudication on
33 the merits that the alleged act or omission of the commissioner or
34 employee giving rise to the claim did not arise out of or by reason of
35 his or her duties or employment, or was caused by intentional or
36 willful and wanton misconduct.

37 (a) Attorneys' fees and related expenses incurred in defending a
38 legal action for which immunity or indemnity is available under this

1 section shall be paid from the assets of the insurer, as they are
2 incurred, in advance of the final disposition of such action upon
3 receipt of an undertaking by or on behalf of the commissioner or
4 employee to repay the attorneys' fees and expenses if it is ultimately
5 determined upon a final adjudication on the merits and that the
6 commissioner or employee is not entitled to immunity or indemnity under
7 this section.

8 (b) Any indemnification under this section is an administrative
9 expense of the insurer.

10 (c) In the event of an actual or threatened litigation against the
11 commissioner or an employee for which immunity or indemnity may be
12 available under this section, a reasonable amount of funds that in the
13 judgment of the commissioner may be needed to provide immunity or
14 indemnity shall be segregated and reserved from the assets of the
15 insurer as security for the payment of indemnity until all applicable
16 statutes of limitation have run or all actual or threatened actions
17 against the commissioner or an employee have been completely and
18 finally resolved, and all obligations of the insurer and the
19 commissioner under this section have been satisfied.

20 (d) In lieu of segregation and reserving of funds, the commissioner
21 may obtain a surety bond or make other arrangements that will enable
22 the commissioner to secure fully the payment of all obligations under
23 this section.

24 (4) If a legal action against an employee for which indemnity may
25 be available under this section is settled before final adjudication on
26 the merits, the insurer shall pay the settlement amount on behalf of
27 the employee, or indemnify the employee for the settlement amount,
28 unless the commissioner determines:

29 (a) That the claim did not arise out of or by reason of the
30 employee's duties or employment; or

31 (b) That the claim was caused by the intentional or willful and
32 wanton misconduct of the employee.

33 (5) In a legal action in which the commissioner is a defendant,
34 that portion of a settlement relating to the alleged act or omission of
35 the commissioner is subject to the approval of the court before which
36 the delinquency proceeding is pending. The court may not approve that
37 portion of the settlement if it determines:

1 (a) That the claim did not arise out of or by reason of the
2 commissioner's duties or employment; or

3 (b) That the claim was caused by the intentional or willful and
4 wanton misconduct of the commissioner.

5 (6) Nothing in this section removes or limits an immunity,
6 indemnity, benefit of law, right, or defense otherwise available to the
7 commissioner, an employee, or any other person, not an employee under
8 subsection (1)(b) of this section, who is employed by or in the office
9 of the commissioner or otherwise employed by the state.

10 (7)(a) Subsection (2) of this section applies to any suit based in
11 whole or in part on an alleged act or omission that takes place on or
12 after July 25, 1993.

13 (b) No legal action lies against the commissioner or an employee
14 based in whole or in part on an alleged act or omission that took place
15 before July 25, 1993, unless suit is filed and valid service of process
16 is obtained within twelve months after July 25, 1993.

17 (c) Subsections (3), (4), and (5) of this section apply to a suit
18 that is pending on or filed after July 25, 1993, without regard to when
19 the alleged act or omission took place.

20 NEW SECTION. **Sec. 3.** (1) An insurer may be subject to
21 administrative supervision by the commissioner if upon examination or
22 at any other time the commissioner makes a finding that:

23 (a) The insurer's condition renders the continuance of its business
24 financially hazardous to the public or to its insureds consistent with
25 this title or any rules adopted by the commissioner;

26 (b) The insurer has or appears to have exceeded its powers granted
27 under its certificate of authority and this title or any rules adopted
28 by the commissioner;

29 (c) The insurer has failed to comply with the applicable provisions
30 of Title 48 RCW or rules adopted by the commissioner such that its
31 condition has or will render the continuance of its business
32 financially hazardous to the public or to its insureds;

33 (d) The business of the insurer is being conducted fraudulently; or

34 (e) The insurer gives its consent.

35 (2) If the commissioner determines that the conditions set forth in
36 subsection (1) of this section exist, the commissioner shall:

37 (a) Notify the insurer of his or her determination;

1 (b) Furnish to the insurer a written list of the requirements to
2 abate this determination; and

3 (c) Notify the insurer that it is under the supervision of the
4 commissioner and that the commissioner is applying and effectuating the
5 provisions of this chapter. Action by the commissioner shall be
6 subject to review pursuant to chapters 48.04 and 34.05 RCW.

7 (3) If placed under administrative supervision, the insurer has
8 sixty days, or another period of time as designated by the
9 commissioner, to comply with the requirements of the commissioner
10 subject to the provisions of this chapter.

11 (4) If it is determined after notice and hearing that the
12 conditions giving rise to the administrative supervision still exist at
13 the end of the supervision period under subsection (3) of this section,
14 the commissioner may extend the period.

15 (5) If it is determined that none of the conditions giving rise to
16 the administrative supervision exist, or that the insurer has remedied
17 the conditions that gave rise to the supervision, the commissioner
18 shall release the insurer from supervision.

19 NEW SECTION. **Sec. 4.** (1) Except as set forth in this section,
20 proceedings, hearings, notices, correspondence, reports, records, and
21 other information in the possession of the commissioner relating to the
22 supervision of any insurer under this chapter are confidential and are
23 not subject to chapter 42.17 RCW, are not subject to subpoena, and are
24 not subject to discovery or admissible in evidence in any private civil
25 action, except as provided by this section. However, the commissioner
26 is authorized to use the documents, materials, or other information in
27 the furtherance of any regulatory or legal action brought as part of
28 the commissioner's official duties.

29 (2) The employees of the commissioner have access to these
30 proceedings, hearings, notices, correspondence, reports, records, or
31 information as permitted by the commissioner. Neither the commissioner
32 nor any person who received documents, materials, or other information
33 while acting under the authority of the commissioner is permitted or
34 required to testify in any private civil action concerning any
35 confidential documents, materials, or information subject to subsection
36 (1) of this section.

1 (3) The commissioner may share the notices, correspondence,
2 reports, records, or information with other state, federal, and
3 international regulatory agencies, with the national association of
4 insurance commissioners and its affiliates and subsidiaries, and with
5 state, federal, and international law enforcement authorities, if the
6 commissioner determines that the disclosure is necessary or proper for
7 the enforcement of the laws of this or another state of the United
8 States, and provided that the recipient agrees to maintain the
9 confidentiality of the documents, material, or other information. No
10 waiver of any applicable privilege or claim of confidentiality may
11 occur as a result of the sharing of documents, materials, or other
12 information under this subsection.

13 (4) The commissioner may open the proceedings or hearings or make
14 public the notices, correspondence, reports, records, or other
15 information if the commissioner deems that it is in the best interest
16 of the public or in the best interest of the insurer or its insureds,
17 creditors, or the general public. However, the determination of
18 whether to disclose any confidential information at the public
19 proceedings or hearings is subject to applicable law.

20 (5) This section does not apply to hearings, notices,
21 correspondence, reports, records, or other information obtained upon
22 the appointment of a receiver for the insurer by a court of competent
23 jurisdiction.

24 NEW SECTION. **Sec. 5.** During the period of administrative
25 supervision, the commissioner or the commissioner's designated
26 appointee shall serve as the administrative supervisor. The
27 commissioner shall establish standards and procedures that maintain
28 reasonable and customary claims practices and otherwise provide for the
29 orderly continuation of the insurer's operations and business.
30 Considering these standards and procedures, the commissioner may
31 provide that the insurer may not do any of the following things during
32 the period of supervision, without the prior approval of the
33 commissioner or the appointed administrative supervisor:

34 (1) Dispose of, convey, or encumber any of its assets or its
35 business in force;

36 (2) Withdraw any of its bank accounts;

37 (3) Lend any of its funds;

- 1 (4) Invest any of its funds;
- 2 (5) Transfer any of its property;
- 3 (6) Incur any debt, obligation, or liability;
- 4 (7) Merge or consolidate with another company;
- 5 (8) Approve new premiums or renew any policies;
- 6 (9) Enter into any new reinsurance contract or treaty;
- 7 (10) Terminate, surrender, forfeit, convert, or lapse any insurance
- 8 policy, certificate, or contract, except for nonpayment of premiums
- 9 due;
- 10 (11) Release, pay, or refund premium deposits; accrued cash or loan
- 11 values; unearned premiums; or other reserves on any insurance policy,
- 12 certificate, or contract;
- 13 (12) Make any material change in management; or
- 14 (13) Increase salaries and benefits of officers or directors or the
- 15 preferential payment of bonuses, dividends, or other payments deemed
- 16 preferential.

17 NEW SECTION. **Sec. 6.** During the period of administrative
18 supervision the insurer may contest an action taken, proposed to be
19 taken, or failed to be taken by the administrative supervisor
20 specifying the manner wherein the action being complained of would not
21 result in improving the condition of the insurer. Denial of the
22 insurer's request upon reconsideration entitles the insurer to request
23 a proceeding under chapters 48.04 and 34.05 RCW.

24 NEW SECTION. **Sec. 7.** RCW 48.31.020, 48.31.115, and sections 3
25 through 6, 8, and 10 of this act do not preclude the commissioner from
26 initiating judicial proceedings to place an insurer in rehabilitation
27 or liquidation proceedings or other delinquency proceedings, however
28 designated under the laws of this state, regardless of whether the
29 commissioner has previously initiated administrative supervision
30 proceedings under this chapter against the insurer.

31 NEW SECTION. **Sec. 8.** The commissioner may meet with the
32 administrative supervisor appointed under this chapter and with the
33 attorney or other representative of the administrative supervisor,
34 without the presence of any other person, at the time of any proceeding

1 or during the pendency of any proceeding held under authority of this
2 chapter to carry out the commissioner's duties under this chapter or
3 for the supervisor to carry out his or her duties under this chapter.

4 NEW SECTION. **Sec. 9.** An action or the failure to act by the
5 commissioner is subject to chapters 48.04 and 34.05 RCW.

6 NEW SECTION. **Sec. 10.** The commissioner may adopt rules to
7 implement and administer RCW 48.31.020, 48.31.115, and sections 3
8 through 8 of this act.

9 NEW SECTION. **Sec. 11.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 12.** Sections 3 through 10 of this act are each
14 added to chapter 48.31 RCW.

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