
SENATE BILL 5197

State of Washington

59th Legislature

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By Senators Fairley, Benton, Keiser, Franklin and Berkey; by request of Insurance Commissioner

Read first time 01/17/2005. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

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;

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

10 (iii) The insurer has failed to promptly comply with the applicable
11 financial reporting statutes or rules and departmental requests
12 relating thereto;

13 (iv) The insurer has neglected or refused to observe an order of
14 the commissioner to make good, within the time prescribed by law, any
15 prohibited deficiency in its capital, capital stock, or surplus;

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17 business after its license has been revoked or suspended by the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

19 (vi) The insurer, by contract or otherwise, has unlawfully or has
20 in violation of an order of the commissioner or has without first
21 having obtained written approval of the commissioner if approval is
22 required by law:

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

24 (B) Merged or consolidated substantially its entire property or
25 business with another insurer;

26 (vii) The insurer engaged in any transaction in which it is not
27 authorized to engage under the laws of this state; or

28 (viii) The insurer refused to comply with a lawful order of the
29 commissioner.

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

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

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

35 (a) The commissioner and any other receiver or administrative
36 supervisor responsible for conducting a delinquency proceeding under

1 this chapter, including present and former commissioners,
2 administrative supervisors, and receivers; and

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

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

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

36 (a) Attorneys' fees and related expenses incurred in defending a
37 legal action for which immunity or indemnity is available under this
38 section shall be paid from the assets of the insurer, as they are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 NEW SECTION. **Sec. 3.** (1) An insurer may be subject to
19 administrative supervision by the commissioner if upon examination or
20 at any other time it appears in the commissioner's discretion that:

21 (a) The insurer's condition renders the continuance of its business
22 hazardous to the public or to its insureds;

23 (b) The insurer has or appears to have exceeded its powers granted
24 under its certificate of authority and applicable law;

25 (c) The insurer has failed to comply with the applicable provisions
26 of Title 48 RCW;

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

28 (e) The insurer gives its consent.

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

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

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

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

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

5 (4) If it is determined after notice and hearing that the
6 conditions giving rise to the supervision still exist at the end of the
7 supervision period under subsection (3) of this section, the
8 commissioner may extend the period.

9 (5) If it is determined that none of the conditions giving rise to
10 the supervision exist, the commissioner shall release the insurer from
11 supervision.

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

22 (2) The employees of the commissioner have access to these
23 proceedings, hearings, notices, correspondence, reports, records, or
24 information as permitted by the commissioner. Neither the commissioner
25 nor any person who received documents, materials, or other information
26 while acting under the authority of the commissioner is permitted or
27 required to testify in any private civil action concerning any
28 confidential documents, materials, or information subject to subsection
29 (1) of this section.

30 (3) The commissioner may share the notices, correspondence,
31 reports, records, or information with other state, federal, and
32 international regulatory agencies, with the national association of
33 insurance commissioners and its affiliates and subsidiaries, and with
34 state, federal, and international law enforcement authorities, if the
35 commissioner determines that the disclosure is necessary or proper for
36 the enforcement of the laws of this or another state of the United
37 States, and provided that the recipient agrees to maintain the

1 confidentiality of the documents, material, or other information. No
2 waiver of any applicable privilege or claim of confidentiality may
3 occur as a result of the sharing of documents, materials, or other
4 information under this subsection.

5 (4) The commissioner may open the proceedings or hearings or make
6 public the notices, correspondence, reports, records, or other
7 information if the commissioner deems that it is in the best interest
8 of the public or in the best interest of the insurer or its insureds,
9 creditors, or the general public.

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

14 NEW SECTION. **Sec. 5.** During the period of supervision, the
15 commissioner or the commissioner's designated appointee shall serve as
16 the administrative supervisor. The commissioner may provide that the
17 insurer may not do any of the following things during the period of
18 supervision, without the prior approval of the commissioner or the
19 appointed supervisor:

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

22 (2) Withdraw any of its bank accounts;

23 (3) Lend any of its funds;

24 (4) Invest any of its funds;

25 (5) Transfer any of its property;

26 (6) Incur any debt, obligation, or liability;

27 (7) Merge or consolidate with another company;

28 (8) Approve new premiums or renew any policies;

29 (9) Enter into any new reinsurance contract or treaty;

30 (10) Terminate, surrender, forfeit, convert, or lapse any insurance
31 policy, certificate, or contract, except for nonpayment of premiums
32 due;

33 (11) Release, pay, or refund premium deposits; accrued cash or loan
34 values; unearned premiums; or other reserves on any insurance policy,
35 certificate, or contract;

36 (12) Make any material change in management; or

1 (13) Increase salaries and benefits of officers or directors or the
2 preferential payment of bonuses, dividends, or other payments deemed
3 preferential.

4 NEW SECTION. **Sec. 6.** During the period of supervision the insurer
5 may contest an action taken or proposed to be taken by the supervisor
6 specifying the manner wherein the action being complained of would not
7 result in improving the condition of the insurer. Denial of the
8 insurer's request upon reconsideration entitles the insurer to request
9 a proceeding under chapters 48.04 and 34.05 RCW.

10 NEW SECTION. **Sec. 7.** RCW 48.31.020, 48.31.115, and sections 3
11 through 6, 8, and 9 of this act do not preclude the commissioner from
12 initiating judicial proceedings to place an insurer in rehabilitation
13 or liquidation proceedings or other delinquency proceedings, however
14 designated under the laws of this state, regardless of whether the
15 commissioner has previously initiated administrative supervision
16 proceedings under this chapter against the insurer.

17 NEW SECTION. **Sec. 8.** The commissioner may meet with a supervisor
18 appointed under this chapter and with the attorney or other
19 representative of the supervisor, without the presence of any other
20 person, at the time of any proceeding or during the pendency of any
21 proceeding held under authority of this chapter to carry out the
22 commissioner's duties under this chapter or for the supervisor to carry
23 out his or her duties under this chapter.

24 NEW SECTION. **Sec. 9.** The commissioner may adopt rules to
25 implement and administer RCW 48.31.020, 48.31.115, and sections 3
26 through 8 of this act.

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

1 NEW SECTION. **Sec. 11.** Sections 3 through 9 of this act are each
2 added to chapter 48.31 RCW.

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