

# SENATE BILL REPORT

## SB 5605

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As Reported by Senate Committee On:  
Health Care, February 21, 2013  
Ways & Means, March 1, 2013

**Title:** An act relating to health plans provided through associations or member-governed groups.

**Brief Description:** Addressing health plans provided through associations or member-governed groups.

**Sponsors:** Senators Becker, Sheldon, Hatfield and Parlette.

**Brief History:**

**Committee Activity:** Health Care: 2/19/13, 2/21/13 [DPS-WM, DNP, w/oRec].  
Ways & Means: 2/28/13, 3/01/13 [DPS(HLTH), DNP].

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### SENATE COMMITTEE ON HEALTH CARE

**Majority Report:** That Substitute Senate Bill No. 5605 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Bailey, Ericksen and Parlette.

**Minority Report:** Do not pass.

Signed by Senator Keiser, Ranking Member.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Cleveland and Schlicher.

**Staff:** Mich'l Needham (786-7442)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5605 as recommended by Committee on Health Care be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Bailey, Becker, Braun, Dammeier, Hatfield, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

**Minority Report:** Do not pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Nelson, Assistant Ranking Member; Fraser, Hasegawa, Keiser, Kohl-Welles and Murray.

**Staff:** Steve Jones (786-7440)

**Background:** Washington State law has allowed associations to be formed solely for the purpose of purchasing insurance. An association means health insurance offered to collections of individuals or employers through entities that may be called associations, trusts, multiple employer welfare arrangements, etc. The association health plans have been regulated as large groups, and have been exempt from small group community rating provisions.

The Federal Centers for Medicare and Medicaid Services (CMS) published revised rules on rate increase disclosure and review, indicating that association health plans are subject to the requirements of the Affordable Care Act. The rules set forth a process for filing rates with the federal rate review agency if a state is deemed not to have an effective rate review for association health plan business. The rules clarify that small employers and individuals purchasing coverage through non-bona fide associations are considered to be small group and individual market products for federal rate review purposes.

A bona fide association health plan is determined by the U.S. Department of Health and Human Services (HHS). The general criteria requires that the group has been in existence for five years; has been formed for purposes other than obtaining insurance; does not condition membership in the association on health status; makes coverage available to all members regardless of health status; and does not make coverage available other than in connection with members. The United States Department of Labor (DOL) is responsible for determining additional factors that will determine if an association meets all the criteria to be a bona fide association. Bona fide associations will continue to be treated as large groups in state and federal regulation. Non-bona fide associations are exempt from state community rating laws but become individual, small, and large groups for federal rate review purposes.

**Summary of Bill (Recommended Substitute):** Until or unless DOL prohibits the treatment of an association health plan as a large group plan, any rate or form filed for a health benefit coverage to employers purchasing the plans through the association must be deemed as a negotiated large group filing by the Office of Insurance Commissioner (OIC), if the carrier certifies the following conditions are met as such:

- the association or member-governed group operates solely within the border of a single state and only includes member employers having registered in Washington State;
- the association or member-governed group has a minimum enrollment of 100 participants;
- a health plan will not underwrite individuals based upon health conditions of the individual;
- a health plan will not be issued to any association that conditions membership based on age, health status, or medical claims experience; and
- a health plan will be offered to all eligible association members, regardless of their age, health status, or medical claims experience.

If any portion of the act is held invalid, the other portions are not affected. If any portion of the act is in conflict with federal requirements that are a prescribed condition for the allocation of federal funds, the conflicting portion is inoperative solely to the extent of the conflict and with respect to the agencies directly affected.

OIC must take necessary steps to ensure the act is implemented in accordance with the effective date.

**EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended Substitute):** Removes the emergency clause.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Health Care):** PRO: We have a lot of small businesses that purchase insurance through associations and we need to ensure they can continue as they are. Associations are not all alike and the federal law treats bona fide groups differently from non-bona fide groups. We want more time to continue offering our plans as they are while DOL completes the designation process. Otherwise our contracts may not be approved for the renewal. Some groups have had wonderful experience in the association products, with better rate experience than they had in the commercial group insurance. It is a confusing time in health care with the transitions coming in 2014 and we would like to protect what we have now. The association products can add to a vibrant marketplace. They tend to offer very good benefit plans. The change for some association plans is an unintended consequence of the ACA and it could lead to market disruptions. Small groups with fewer than 50 employees have enjoyed the coverage – options through associations. The changes in 2014 may force small employers to drop coverage - there is so much uncertainty with the changes.

OTHER: The federal DOL is responsible for determining whether an association is a bona fide group that will still be subject to large group rating. The federal guidance has made it clear that associations with small employers have to be rated as small groups. This language tries to create a federal pre-emption which is an important issue driving our fiscal impact estimate.

**Persons Testifying (Health Care):** PRO: John Stuhlmiller, WA Farm Bureau; Matt Canedy, Assn. of WA Business; Deborah Barnard, Barnard Griffin Winery; Carolyn Logue, WA Food Industry Assn.; Chris Bandoli, Regence BlueShield; Randy Ray, WA Alliance for Healthcare Insurance Trust; Gary Smith, Independent Business Assn.

OTHER: Drew Bouton, Meg Jones, OIC.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This legislation clarifies the legal standards for association health insurance plans, and only bona fide associations will qualify to offer these plans. The objective of the federal Affordable Care Act is to provide health insurance coverage that people need at an affordable price, and this legislation is consistent with that goal. The result will be lower premiums for consumers.

**Persons Testifying (Ways & Means):** PRO: Lew McMurrin, WA Technology Industry Assn.; Randy Ray, WA Alliance for Healthcare Insurance Trust; Tom Davis, WA Farm Bureau.