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SENATE BILL 5489

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Mullet, Hobbs, and Nelson; by request of Insurance Commissioner

Read first time 01/31/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to adopting the insurer state of entry model act;  
2 amending RCW 48.05.090; adding new sections to chapter 48.35 RCW;  
3 repealing RCW 48.35.010, 48.35.020, 48.35.030, 48.35.040, 48.35.050,  
4 48.35.060, 48.35.070, 48.35.080, 48.35.090, 48.35.100, 48.35.110,  
5 48.35.120, 48.35.130, 48.35.140, 48.35.150, 48.35.160, 48.35.170,  
6 48.35.180, 48.35.190, and 48.35.200; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** The definitions in this section apply  
9 throughout this chapter.

10 (1) "Non-United States insurer" means an insurer organized under  
11 the laws of a foreign country. It also means an "alien insurer," which  
12 is defined in RCW 48.05.010.

13 (2) "United States branch" means the business unit through which  
14 business is transacted within the United States by a non-United States  
15 insurer and the assets and liabilities of the insurer within the United  
16 States pertaining to such business.

17 NEW SECTION. **Sec. 2.** This chapter and RCW 48.05.090(1)(b) apply  
18 to a United States branch using this state as a state of entry to

1 transact insurance in the United States. The United States branch is  
2 also subject to all state laws applicable to an insurer domiciled in  
3 this state unless otherwise provided.

4 NEW SECTION. **Sec. 3.** (1) A non-United States insurer may use this  
5 state as a state of entry to transact insurance in the United States  
6 through a United States branch by:

7 (a) Qualifying as an insurer licensed to do business in this state;  
8 and

9 (b) Establishing a trust account, pursuant to a trust agreement  
10 approved by the commissioner with a United States bank approved by the  
11 commissioner, in an amount at least equal to the minimum capital and  
12 surplus or authorized control level risk-based capital, whichever is  
13 greater, required to be maintained by a domestic insurer licensed to do  
14 the same kind of insurance.

15 (2) Before authorizing the entry through this state of a United  
16 States branch of any non-United States insurer, the commissioner shall  
17 require the non-United States insurer, in addition to the requirements  
18 of section 5 of this act and any other requirement of the insurance  
19 code to submit:

20 (a) A copy of its charter and bylaws, if any, currently in force,  
21 and such other documents necessary to show the kinds of business that  
22 it is empowered to do in its domiciliary jurisdiction, attested to as  
23 accurate and complete by the insurance supervisory official in its home  
24 jurisdiction, and a full statement, subscribed and affirmed as true  
25 under the penalties of perjury by two officers or equivalent  
26 responsible representatives in such manner as the commissioner  
27 prescribes, of its financial conditions as of the close of its latest  
28 fiscal year, showing its assets, liabilities, income disbursements,  
29 business transacted and other facts required to be shown in its annual  
30 statement, as reported to the insurance supervisory official in its  
31 home jurisdiction; an English language translation, as necessary, of  
32 any of the documents required in this section; and

33 (b) To an examination of the insurer's affairs at its principal  
34 office within the United States. However, the commissioner may instead  
35 accept a report of the insurance supervisory official of the insurer's  
36 home jurisdiction.

1           NEW SECTION.   **Sec. 4.** The assets in the trust account are known as  
2 "trusteed assets" and must at all times be in an amount equal to the  
3 United States branch's reserves and other liabilities plus the minimum  
4 capital and surplus or authorized control level risk-based capital,  
5 whichever is greater, required to be maintained by a domestic insurer  
6 licensed to do the same kind of insurance.

7           NEW SECTION.   **Sec. 5.** (1) The deed of trust and all amendments  
8 thereto must be authenticated in the form and manner as the  
9 commissioner prescribes and are not effective unless approved by the  
10 commissioner upon a finding that:

11           (a) A deed of trust or its amendments are sufficient in form and in  
12 conformity with law;

13           (b) The trustee or trustees are eligible as such; and

14           (c) The deed of trust is adequate to protect the interests of the  
15 beneficiaries of the trust.

16           (2) If at any time the commissioner finds, after reasonable notice  
17 and hearing, that the requisites for the approval no longer exist, the  
18 commissioner may withdraw approval.

19           (3) The commissioner may from time to time approve modifications  
20 of, or variations in any deed of trust, which in the commissioner's  
21 judgment are not prejudicial to the interests of the people of this  
22 state or the United States policyholders and creditors of the United  
23 States branch.

24           (4)(a) The deed of trust must contain provisions that:

25           (i) Vest legal title to trusteed assets in the trustees, and their  
26 successors lawfully appointed;

27           (ii) Require that all assets deposited in the trust must be  
28 continuously kept within the United States;

29           (iii) Provide for substitution of a new trustee or trustees in case  
30 of a vacancy by death, resignation or otherwise, subject to the  
31 approval of the commissioner;

32           (iv) Require that the trustee or trustees shall continuously  
33 maintain a record at all times sufficient to identify the assets of  
34 such a fund;

35           (v) Require that the trusteed assets must consist of cash and/or  
36 investments eligible for investment of the funds of domestic insurers  
37 and accrued interest thereon if collectable by the trustee;

1 (vi) Require that the trust must be for the exclusive benefit,  
2 security, and protection of the policyholders, or policyholders and  
3 creditors, of the United States branch in the United States and that it  
4 must be maintained as long as there is outstanding any liability of the  
5 non-United States insurer arising out of its insurance transactions in  
6 the United States; and

7 (vii) Provide, in substance, that no withdrawals of assets, other  
8 than income as specified in (b) of this subsection may be made or  
9 permitted by the trustee or trustees without the approval of the  
10 commissioner except to:

11 (A) Make deposits required by law in any state for the security or  
12 benefit of all policyholders, or policyholders and creditors, of the  
13 United States branch in the United States;

14 (B) Substitute other assets permitted by law and at least equal in  
15 value and quality to those withdrawn, upon the specific written  
16 direction of the United States manager when duly empowered and acting  
17 pursuant to either general or specific written authority previously  
18 given or delegated by the board of directors; or

19 (C) Transfer such assets to an official liquidator or rehabilitator  
20 pursuant to an order of a court of competent jurisdiction.

21 (b) The deed of trust may provide that income, earnings, dividends,  
22 or interest accumulations of the assets of the fund may be paid over to  
23 the United States manager of the United States branch upon request,  
24 provided that the total trustee assets are not less than the amount  
25 required to be maintained pursuant to section 4 of this act.

26 (5) Upon withdrawal of trustee assets deposited in another state  
27 in which the insurer is authorized to do business, it is sufficient if  
28 the deed of trust requires similar written approval of the insurance  
29 supervising official of that state in lieu of approval of the  
30 commissioner provided that the total trustee assets are not then less  
31 than the amount required to be maintained pursuant to section 4 of this  
32 act. In all such cases, the United States branch shall notify the  
33 commissioner in writing of the nature and extent of the withdrawal.

34 (6) The commissioner may from time to time:

35 (a) Make examinations of the trustee assets of any authorized  
36 United States branch at the insurer's expense; and

37 (b) Require the trustee or trustees to file a statement, in the

1 form the commissioner prescribes, certifying the assets of the trust  
2 fund and the amounts thereof.

3 (7) Refusal or neglect of any trustee to comply with the  
4 requirements of this section is ground for the revocation of the  
5 insurer's license or the liquidation of its United States branch.

6 NEW SECTION. **Sec. 6.** (1) In addition to other requirements of  
7 this chapter, every authorized United States branch must, not later  
8 than the first day of March in each year and the fifteenth day of the  
9 second month after the end of each of the first three calendar year  
10 quarters, file with the national association of insurance  
11 commissioners:

12 (a) Annual and quarterly statements of the business transacted  
13 within the United States and the assets held by or for it within the  
14 United States for the protection of policyholders and creditors within  
15 the United States, and of the liabilities incurred against such assets.  
16 The forms must not contain any statement in regard to its assets and  
17 business elsewhere. The statements must be in the same format required  
18 of an insurer domiciled in the United States branch's state of entry  
19 state and licensed to write the same kinds of insurance; and

20 (b) A statement of trustee surplus, in such form as the  
21 commissioner prescribes, as of the end of the same period covered by  
22 the statement filed pursuant to this subsection. The aggregate value  
23 of the insurer's general state deposits and trustee assets deposited  
24 with a trustee in compliance with section 5 of this act, plus accrued  
25 investment income thereon where such interest is collected by the  
26 states for trustees, less the aggregate net amount of all of its  
27 reserves and other liabilities in the United States as determined in  
28 accordance with this section are known as its "trustee surplus" in the  
29 United States. In determining the net amount of the United States  
30 branch's liabilities in the United States to be reported in the  
31 statement of trustee surplus, the United States branch shall make  
32 adjustments to total liabilities reported on the accompanying annual or  
33 quarterly statement as follows:

34 (i) Add back liabilities used to offset admitted assets reported in  
35 the accompanying quarterly or annual statement; and

36 (ii) Deduct:

1 (A) Unearned premiums on agent's balances or uncollected premiums  
2 not more than ninety days past due;

3 (B) Reinsurance on losses with authorized insurers, less unpaid  
4 reinsurance premiums;

5 (C) Reinsurance recoverables on paid losses from unauthorized  
6 insurers that are included as an asset in the annual statement, but  
7 only to the extent a liability for such unauthorized recoverables is  
8 included in the liabilities report in the trustee surplus statement;

9 (D) Special state deposits held for the exclusive benefit of  
10 policyholders, or policyholders and creditors, of any particular state  
11 not exceeding net liabilities reports for that state;

12 (E) Secured accrued retrospective premiums;

13 (F) If a life insurer:

14 (I) The amount of its policy loans to policyholders within the  
15 United States, not exceeding the amount of legal reserve required on  
16 each such policy; and

17 (II) The net amount of uncollected and deferred premiums; and

18 (G) Any other non-trusted asset which the commissioner determines  
19 secures liabilities in a substantially similar manner; and

20 (c) Any additional information that the commissioner requires  
21 relating to the total business or assets, or any portion thereof, of  
22 the non-United States insurer.

23 (2) The annual statement and trustee surplus statement must be  
24 signed and verified by the United States manager, attorney-in-fact, or  
25 a duly empowered assistant United States manager, of the United States  
26 branch. The items of securities and other property held under trust  
27 deeds must be certified in the trustee surplus statement by the United  
28 States trustee or trustees.

29 (3) Every report on examination of a United States branch must  
30 include a trustee surplus statement as of the date of examination in  
31 addition to the general statement of the financial condition of the  
32 United States branch.

33 NEW SECTION. **Sec. 7.** (1) Before issuing any new or renewal  
34 license to any United States branch, the commissioner may require  
35 satisfactory proof, either in the non-United States insurer's charter  
36 or by an agreement evidenced by a duly certified resolution of its

1 board of directors, or otherwise as the commissioner requires, that the  
2 insurer will not engage in any insurance business in contravention of  
3 this section or not authorized by its charter.

4 (2) The commissioner must issue a renewal license to any United  
5 States branch if satisfied, by such proof as required, that the insurer  
6 is not delinquent with respect to any requirement imposed by this  
7 chapter and that its continuance in business in this state will not be  
8 hazardous or prejudicial to the best interests of the people of this  
9 state.

10 (3) A United States branch must not be licensed to do in this state  
11 any kind of insurance business, or any combination of kinds of  
12 insurance business, that are not permitted to be done by domestic  
13 insurers licensed under this chapter. A United States branch must not  
14 be authorized to do any insurance business in this state if it does  
15 anywhere within the United States any kind of business other than an  
16 insurance business and the business necessarily or properly incidental  
17 to the kind or kinds of insurance business that it is authorized to do  
18 in this state.

19 (4) Except as otherwise specifically provided, a United States  
20 branch, entering through this state or another state, may not be or  
21 continue to be authorized to do an insurance business in this state if  
22 it fails to comply substantially with any requirement or limitation of  
23 this chapter, applicable to similar domestic insurers organized after  
24 the effective date of this section, that in the judgment of the  
25 commissioner is reasonably necessary to protect the interest of the  
26 policyholders.

27 (5) A United States branch that does outside of this state any kind  
28 or combination of kinds of insurance business not permitted to be done  
29 in this state by similar domestic insurers organized after the  
30 effective date of this section, may not be or continue to be authorized  
31 to do an insurance business in this state, unless in the judgment of  
32 the commissioner the doing of such kind or combination of kinds of  
33 insurance business will not be prejudicial to the best interests of the  
34 people of this state.

35 (6) A United States branch may not be or continue to be authorized  
36 to do an insurance business in this state if it fails to keep full and  
37 correct entries of its transactions, that must at all times be open to

1 the inspection of persons invested by law with the rights of inspection  
2 and be maintained in its principal office within this state.

3 NEW SECTION. **Sec. 8.** Whenever it appears to the commissioner from  
4 any annual or quarterly statement or trustee surplus statement or any  
5 other report that a United States branch's trustee surplus is reduced  
6 below minimum capital and surplus or the authorized control level risk-  
7 based capital, whichever is greater, required to be maintained by a  
8 domestic insurer licensed to transact the same kinds of insurance, the  
9 commissioner may proceed against the insurer pursuant to chapter 48.31  
10 RCW as an insurer whose condition is such that its further transaction  
11 of business in the United States will be hazardous to its  
12 policyholders, its creditors, or the public in the United States.

13 NEW SECTION. **Sec. 9.** All trusts of trustee assets created before  
14 January 1, 2014, must be continued under the instruments creating those  
15 trusts. If the commissioner determines that the instruments are  
16 inconsistent with this chapter, the insurer must correct those  
17 inconsistencies within six months of the commissioner's determination.

18 **Sec. 10.** RCW 48.05.090 and 1949 c 190 s 4 are each amended to read  
19 as follows:

20 (1) An alien insurer (~~shall~~) must not be authorized to transact  
21 insurance in this state unless it maintains within the United States  
22 assets in amount not less than its outstanding liabilities arising out  
23 of its insurance transactions in the United States, nor unless it  
24 maintains a trust deposit in an amount not less than the required  
25 reserves under its policies resulting from such transactions (after  
26 deducting, in the case of a life insurer, the amount of outstanding  
27 policy loans on such policies) plus assets equal to the larger of the  
28 following sums:

29 (a) The largest amount of deposit required under this title to be  
30 made in this state by any type of domestic insurer transacting like  
31 kinds of insurance; or

32 (b) (~~Two hundred thousand dollars.~~) The minimum capital and  
33 surplus or the authorized control level risk-based capital, whichever  
34 is greater, required to be maintained by a domestic insurer licensed to  
35 transact the same kinds of insurance. Except an alien insurer, until



1 December 31, 2016, using a state of entry other than this state that is  
2 authorized in this state prior to the effective date of this section is  
3 permitted to maintain only the trust deposit required by its state of  
4 entry as long as it remains continuously authorized in this state.

5 (2) The trust deposit (~~shall~~) must be for the security of all  
6 policyholders or policyholders and obligees of the insurer in the  
7 United States. It (~~shall~~) must not be subject to diminution below  
8 the amount currently determined in accordance with subsection (1) of  
9 this section so long as the insurer has outstanding any liabilities  
10 arising out of its business transacted in the United States.

11 (3) The trust deposit (~~shall~~) must be maintained with public  
12 depositaries or trust institutions within the United States approved by  
13 the commissioner.

14 NEW SECTION. Sec. 11. The following acts or parts of acts are  
15 each repealed:

- 16 (1) RCW 48.35.010 (Application--Definition) and 1991 c 268 s 1;
- 17 (2) RCW 48.35.020 (Deposit required--Amount) and 1991 c 268 s 2;
- 18 (3) RCW 48.35.030 (Deposit required--Duration) and 1991 c 268 s 4;
- 19 (4) RCW 48.35.040 (Trusts created before May 17, 1991) and 1991 c  
20 268 s 3;
- 21 (5) RCW 48.35.050 (Alien insurer--State authorization required) and  
22 1991 c 268 s 6;
- 23 (6) RCW 48.35.060 (Trusted assets--Creation--Commissioner's  
24 approval of trust agreement) and 1991 c 268 s 5;
- 25 (7) RCW 48.35.070 (Trust agreement--Amendment) and 1991 c 268 s 7;
- 26 (8) RCW 48.35.080 (Trust agreement--Withdrawal of commissioner's  
27 approval) and 1991 c 268 s 8;
- 28 (9) RCW 48.35.090 (Trust agreement--Vesting of trusted assets) and  
29 1991 c 268 s 9;
- 30 (10) RCW 48.35.100 (Trusted assets--Trustee's records) and 1991 c  
31 268 s 10;
- 32 (11) RCW 48.35.110 (Trusted assets--Trustee's statements--  
33 Commissioner's approval) and 1991 c 268 s 11;
- 34 (12) RCW 48.35.120 (Trusted assets--Examination--Commissioner's  
35 approval of assignment or transfer) and 1991 c 268 s 12;
- 36 (13) RCW 48.35.130 (Trusted assets--Commissioner's approval of  
37 withdrawals) and 1991 c 268 s 13;

1 (14) RCW 48.35.140 (Trusteed assets--Substitution of trustee) and  
2 1991 c 268 s 14;

3 (15) RCW 48.35.150 (Trusteed assets--Compensation and expenses of  
4 trustees) and 1991 c 268 s 15;

5 (16) RCW 48.35.160 (United States manager--Mexican or Canadian  
6 insurers) and 1991 c 268 s 16;

7 (17) RCW 48.35.170 (Domestication of alien insurer--Commissioner's  
8 approval) and 1991 c 268 s 17;

9 (18) RCW 48.35.180 (Domestication agreement--Necessary  
10 authorization) and 1991 c 268 s 18;

11 (19) RCW 48.35.190 (Domestication agreement--Commissioner's  
12 approval of corporate proceedings) and 1991 c 268 s 19; and

13 (20) RCW 48.35.200 (Domestication--When effective--Deposits--  
14 Transfer of assets) and 1991 c 268 s 20.

15 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act are each  
16 added to chapter 48.35 RCW.

17 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2014.

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