SENATE BILL REPORT
SB 6241

As of January 31, 2020

Title: An act relating to independently procured insurance and applying the state insurance premium tax to such insurance for both in-state and out-of-state risk.

Brief Description: Concerning independently procured insurance and applying the state insurance premium tax to such insurance for both in-state and out-of-state risk.

Sponsors: Senators Liias, Keiser, Wilson, C., Das and Van De Wege; by request of Insurance Commissioner.

Brief History:

Committee Activity: Financial Institutions, Economic Development & Trade: 1/30/20.

Brief Summary of Bill

- Requires exempt commercial purchasers who independently procure insurance to file with the Office of the Insurance Commissioner and pay tax on its premiums.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE

Staff: Kellee Gunn (786-7429)

Background: Insurance Regulation and Taxation in Washington State. An authorized insurer, also known as an admitted insurer, is an insurer licensed to do business in the state. To be licensed, an insurer must provide certain information such as rates and policies to the Office of the Insurance Commissioner (OIC). Unauthorized insurance, such as surplus lines insurance, is allowable if registered with the OIC. A surplus lines policy may only be sold if:

- a diligent effort has been made to purchase insurance in the authorized market;
- the purpose of buying the coverage is not to secure a lower premium rate than would be accepted by any authorized insurer; and
- the insurance is purchased through a licensed surplus line broker.

All net premiums collected and received by authorized insurers and surplus lines insurance are subject to the insurance premiums tax except for title insurers and fraternal benefit

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societies. The insurance premiums tax rate is two percent, except for ocean marine and foreign trade who pay 0.95 percent. For property and casualty insurance, if this state is the insured's home state, the tax is computed upon the entire premium without regard to whether the policy covers risks or exposures in this state. For all other lines of insurance, the tax is computed upon the proportion of the premium properly allocable to the risks or exposures located in this state.

Exempt Commercial Purchasers. A person is an exempt commercial purchaser if they employ or retain a qualified risk manager to negotiate insurance coverage; have paid aggregate commercial property and casualty insurance premiums exceeding $100,000 in the previous year; and meet one of the following criteria:

- possess a net worth in excess of $20 million;
- generate revenues of $50 million;
- employ 500 full-time equivalent employees;
- are a nonprofit or public entity with at least $30 million in annual budgeted expenditures; or
- are a municipality in excess of 50,000 people.

The term exempt commercial purchaser refers to the fact that they are exempt from needing to buy insurance on the commercial insurance market and can buy from a surplus line broker if certain criteria are met.

Summary of Bill: Exempt commercial purchasers are required to file with the OIC a statement of all independently procured insurance annually on the first day of March. The statement must include an aggregate of net premiums and additional information as required by the OIC.

An exempt commercial purchaser must pay a tax on the entire premium for independently procured property and casualty insurance, other than workers compensation insurance, that covers risk or exposures in the United States and its territories. No tax is due or payable for premiums allocable to risks or exposures outside the United States.

Failure to file a report is a $1,000 fine, and failure to file an annual statement or pay the premium tax on independently procured insurance will result in the same penalties and interest under current law for delinquent insurers and taxpayers. All taxes and fees are credited to the state general fund.

Independently procured insurance means insurance obtained directly by a qualified exempt commercial purchaser from an unauthorized insurer.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This issue was brought to the OIC by the business community. Our global companies need to thrive, but there should be parity between them and other smaller companies. This bill takes one step forward. Our office became aware of captives three years ago. We began to take enforcement action on what we considered unlawful insurance. This is a third type of insurance, separate from authorized and surplus lines. Some states have their own regulatory scheme that regulates captives separately from other insurance. This bill creates a legal framework. Captives are a valuable tool. They allow companies to cover risks that can not be covered elsewhere. A captive insurance company can write their own policies. If a deductible is too high in the commercial market, a captive can create their own insurance that makes covering the deductible affordable. In state tax, premiums are exempt from B&O tax and the premiums may be deducted from federal income tax. This would affect certain large companies. This bill imposes the 2 percent tax that currently exists on all insurance. That 2 percent tax is not about collecting that money, it is about enforcing the law as it is now. Market stability is important.

CON: This is an issue that will affect our business's fate in Washington State. We are the largest industrial staffing company in Washington and the last publicly traded company in Tacoma, WA. Our company provides workers compensation and wage protection and in Washington State that is fulfilled through our state fund. Outside of Washington, most states do not have a worker's compensation fund. In those states, the only option is to self-insure through a captive. This type of self-insurance for workers compensation does not fall under the regulatory authority of the OIC. The self-insurance captive, in Hawaii, reimburses the company in states that do not have a state fund. If this were to pass, we would not be able to keep our headquarters here. Going back 20 years assessing tax and interest would be catastrophic if this is applied retroactively. We would be at a competitive disadvantage to other companies with captives. We use captive insurance to protect against certain types of risk. We appreciate OIC's attempt to recognize captives. We do oppose the 2 percent tax on all risk, rather than just Washington risk. The sense is that if the premium tax was applied to all risk, many companies would suspend their captives and put the funds to cover risk on their balance sheet.

OTHER: This is a complex issue. The state of Oregon has done it right on filing and sharing information, and section 4 could be improved by changing it to reflect Oregon's program. The Todd Shipyards case makes this section problematic.

Persons Testifying: PRO: Senator Marko Liias, Prime Sponsor; AnnaLisa Gellerman, Office of the Insurance Commissioner; Lonnie Johns-Brown, Office of the Insurance Commissioner.

CON: Garrett Ferencz, True Blue; Dan Coyne, Responsible Employer Coalition.

OTHER: Steve Gano, Chubb.

Persons Signed In To Testify But Not Testifying: No one.