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**HOUSE BILL 1714**

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**State of Washington**

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**By** Representatives Cortes, Walen, Parshley, Callan, Zahn, Peterson, Shavers, Salahuddin, Street, Reed, Nance, Ormsby, and Hill

Read first time 01/29/25. Referred to Committee on Consumer Protection & Business.

1 AN ACT Relating to enabling opportunities for risk pooling by  
2 small businesses for property and liability risks; and adding a new  
3 chapter to Title 48 RCW.

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

5 NEW SECTION. **Sec. 1.** This chapter is intended to provide  
6 authority for two or more small business entities to participate in a  
7 joint self-insurance program covering property or liability risks.  
8 This chapter provides small business entities with the authority to  
9 jointly self-insure property and liability risks, jointly purchase  
10 insurance or reinsurance, and contract for risk management, claims,  
11 and administrative services with other small business entities. This  
12 chapter must be liberally construed to grant small business entities  
13 maximum flexibility in jointly self-insuring to the extent the self-  
14 insurance programs are operated in a safe and sound manner. This  
15 chapter is intended to require prior approval for the establishment  
16 of every joint self-insurance program. In addition, this chapter is  
17 intended to require every joint self-insurance program for small  
18 business entities established under this chapter to notify the state  
19 of the existence of the program and to comply with the regulatory and  
20 statutory standards governing the management and operation of the  
21 programs as provided in this chapter. This chapter is not intended to

1 authorize or regulate self-insurance of unemployment compensation  
2 under chapter 50.44 RCW or industrial insurance under chapter 51.14  
3 RCW.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires  
6 otherwise.

7 (1) "Program" means a joint self-insurance program authorized  
8 under section 3 of this act.

9 (2) "Property and liability risks" includes the risk of property  
10 damage or loss sustained by a small business entity and the risk of  
11 claims arising from the tortious or negligent conduct or any error or  
12 omission of the entity, its officers, employees, agents, or  
13 volunteers as a result of a claim that may be made against the  
14 entity.

15 (3) "Self-insurance" means a formal program of advance funding  
16 and management of entity financial exposure to a risk of loss that is  
17 not transferred through the purchase of an insurance policy or  
18 contract.

19 (4) "Small business entity" means a corporation, limited  
20 liability company, limited partnership, limited liability  
21 partnership, general cooperative association, limited cooperative  
22 association, sole proprietorship, or another type of for-profit  
23 business entity, so long as the entity has no more than 20 employees  
24 employed on average over the latest 24 calendar months, counting all  
25 employees regardless of the hours worked or temporary status of an  
26 employee, provided that if an entity has not been in business for 24  
27 months, the average number of employees is used for each of the pay  
28 periods during which it has been in business.

29 (5) "State risk manager" means the risk manager of the office of  
30 risk management within the department of enterprise services.

31 NEW SECTION. **Sec. 3.** (1) A small business entity may join or  
32 form a joint self-insurance program together with one or more other  
33 small business entities, and may jointly purchase insurance or  
34 reinsurance with one or more other small business entities for  
35 property and liability risks only as permitted under this chapter.  
36 Small business entities may contract for or hire personnel to provide  
37 risk management, claims, and administrative services in accordance  
38 with this chapter.

1 (2) The agreement to form a program may include the organization  
2 of a separate legal or administrative entity with powers delegated to  
3 the entity. The entity may include or form another entity.

4 (3) If provided for in the organizational documents, a program  
5 may, in conformance with this chapter:

6 (a) Contract or otherwise provide for risk management and loss  
7 control services;

8 (b) Contract or otherwise provide legal counsel for the defense  
9 of claims and other legal services;

10 (c) Consult with the commissioner and the state risk manager;

11 (d) Jointly purchase insurance and reinsurance coverage in a form  
12 and amount as provided for in the organizational documents;

13 (e) Obligate the program's participants to pledge funds or  
14 revenues to secure the obligations or pay the expenses of the  
15 program, including the establishment of a reserve fund for coverage,  
16 including an additional assessment if the reserve fund or the  
17 program's revenue or assets are insufficient to cover the program's  
18 liabilities; and

19 (f) Possess any other powers and perform all other functions  
20 reasonably necessary to carry out the purposes of this chapter.

21 (4) Every program governed by this chapter must appoint the state  
22 risk manager as its attorney to receive service of, and upon whom  
23 must be served, all legal process issued against the program in this  
24 state upon causes of action arising in this state.

25 (a) Service upon the state risk manager as attorney constitutes  
26 service upon the program. Service upon programs subject to this  
27 chapter may only occur by service upon the state risk manager. At the  
28 time of service, the plaintiff shall pay to the state risk manager a  
29 fee to be set by the state risk manager, taxable as costs in the  
30 action.

31 (b) With the initial filing for approval with the state risk  
32 manager, each program must designate by name and address the person  
33 to whom the state risk manager must forward legal process that is  
34 served upon him or her. The program may change this person by filing  
35 a new designation.

36 (c) The appointment of the state risk manager as attorney is  
37 irrevocable, binds any successor in interest or to the assets or  
38 liabilities of the program, and remains in effect as long as there is  
39 in force in this state any contract made by the program or  
40 liabilities or duties arising from the contract.

1 (d) The state risk manager shall keep a record of the day and  
2 hour of service upon him or her of all legal process. A copy of the  
3 process, by registered mail with return receipt requested, must be  
4 sent by the state risk manager to the person designated to receive  
5 legal process by the program in its most recent designation filed  
6 with the state risk manager. Proceedings may not commence against the  
7 program, and the program is not required to appear, plead, or answer,  
8 until the expiration of 40 days after the date of service upon the  
9 state risk manager.

10 (e) For any legal process issued against the program for causes  
11 of action arising outside of this state, the program shall provide  
12 the state risk manager a copy of such claim.

13 (5) A program approved under this chapter may not be transferred  
14 to, nor may control over such a program be given to or taken by, a  
15 broker or other person without the express agreement of all small  
16 business entities participating in the approved program and the  
17 approval of the state risk manager.

18 NEW SECTION. **Sec. 4.** This chapter does not apply to a small  
19 business entity that:

20 (1) Individually self-insures for property and liability risks;

21 (2) Participates in a risk pooling arrangement, including a risk  
22 retention group or a risk purchasing group, regulated under chapter  
23 48.92 RCW, or is a captive insurer authorized in its state of  
24 domicile; or

25 (3) Is a hospital licensed under chapter 70.41 RCW, or an entity  
26 owned, operated, controlled by, or affiliated with such a hospital  
27 that participates in a self-insurance risk pool or other risk pooling  
28 arrangement.

29 NEW SECTION. **Sec. 5.** The state risk manager shall adopt rules  
30 governing the management and operation of programs for small business  
31 entities that cover property or liability risks. All rules must be  
32 appropriate for the type of program and class of risk covered. The  
33 state risk manager's rules must include:

34 (1) Standards for the management, operation, and solvency of  
35 programs, including the necessity and frequency of actuarial analyses  
36 and claims audits;

37 (2) Standards for claims management procedures;

1 (3) Standards for contracts between programs and private  
2 businesses, including standards for contracts between third-party  
3 administrators and programs; and

4 (4) Standards requiring pool verification of each member's lawful  
5 business status in their state of domicile.

6 NEW SECTION. **Sec. 6.** Before the establishment of a program  
7 covering property or liability risks by small business entities, the  
8 entities must obtain the approval of the state risk manager. The  
9 small business entities proposing the creation of a program requiring  
10 prior approval shall submit a plan of management and operation to the  
11 state risk manager that provides at least the following information:

12 (1) The risk or risks to be covered, including any coverage  
13 definitions, terms, conditions, and limitations;

14 (2) The amount and method of funding the covered risks, including  
15 the initial capital and proposed rates and projected premiums;

16 (3) The proposed claim reserving practices;

17 (4) The proposed purchase and maintenance of insurance or  
18 reinsurance in excess of the amounts retained by the program;

19 (5) The legal form of the program including, but not limited to,  
20 any articles of incorporation, bylaws, charter, or trust agreement or  
21 other agreement among the participating entities;

22 (6) The agreements with participants in the program defining the  
23 responsibilities and benefits of each participant and management;

24 (7) The proposed accounting, depositing, and investment practices  
25 of the program;

26 (8) The proposed time when actuarial analysis will be first  
27 conducted and the frequency of future actuarial analysis;

28 (9) A designation of the individual to whom service of process  
29 must be forwarded by the state risk manager on behalf of the program;

30 (10) All contracts between the program and private persons  
31 providing risk management, claims, or other administrative services;

32 (11) A professional analysis of the feasibility of the creation  
33 and maintenance of the program;

34 (12) A legal analysis or an internal revenue service opinion on  
35 the federal income tax exposure or liability of the program; and

36 (13) Any other information required by rule of the state risk  
37 manager that is necessary to determine the probable financial and  
38 management success of the program or that is necessary to determine  
39 compliance with this chapter.

1        NEW SECTION.    **Sec. 7.**    A small business entity may participate in  
2 a program covering property or liability risks with similar small  
3 business entities from other states if the program satisfies the  
4 following requirements:

5        (1) An ownership interest in the program is limited to some or  
6 all small business entities of this state and small business entities  
7 of other states that are provided insurance by the program;

8        (2) The small business entities of this state and other states  
9 elect a board of directors to manage the program, all of whom must be  
10 affiliated with one or more of the participating small business  
11 entities;

12        (3) The program provides coverage through the delivery to each  
13 participating small business entity of one or more written policies  
14 affecting insurance of covered risks;

15        (4) The program is financed, including the payment of premiums  
16 and the contribution of initial capital, in accordance with the plan  
17 of management and operation submitted to the state risk manager in  
18 accordance with this chapter;

19        (5) The financial statements of the program are audited by a  
20 certified public accountant, and these audited financial statements  
21 are delivered to the state risk manager not more than 120 days after  
22 the end of each fiscal year of the program;

23        (6) The investments of the program are initiated only with  
24 financial institutions or broker-dealers, or both, doing business in  
25 those states in which participating small business entities are  
26 located, and these investments are audited annually by the certified  
27 public accountants for the program;

28        (7) The treasurer of a multistate joint self-insurance program is  
29 designated by resolution of the program and the treasurer is located  
30 in the state of one of the participating entities; and

31        (8) The program obtains approval from the state risk manager in  
32 accordance with this chapter and remains in compliance with this  
33 chapter, unless exempt from application for reapproval, as granted  
34 under RCW 48.180.015.

35        NEW SECTION.    **Sec. 8.**    (1) Within 120 days of receipt of a plan  
36 of management and operation, the state risk manager shall either  
37 approve or disapprove of the formation of the program after reviewing  
38 the plan to determine whether the proposed program complies with this  
39 chapter and all rules adopted in accordance with this chapter.

1 (2) If the state risk manager denies a request for approval, the  
2 state risk manager shall specify in detail the reasons for denial and  
3 the manner in which the program fails to meet the requirements of  
4 this chapter or any rules adopted in accordance with this chapter.

5 (3) If the state risk manager determines that a joint self-  
6 insurance program covering property or liability risks is in  
7 violation of this chapter or is operating in an unsafe financial  
8 condition, the state risk manager may issue and serve upon the  
9 program an order to cease and desist from the violation or practice.

10 (a) The state risk manager shall deliver the cease and desist  
11 order to the appropriate entity or entities directly or mail it to  
12 the appropriate entity or entities by certified mail with return  
13 receipt requested.

14 (b) If the program violates the cease and desist order or has not  
15 taken steps to comply with the cease and desist order after the  
16 expiration of 20 days after the cease and desist order has been  
17 received by the program, the program is deemed to be operating in  
18 violation of this chapter, and the state risk manager shall notify  
19 the attorney general of the violation.

20 (c) After hearing, or with the consent of a program governed  
21 under this chapter, and in addition to or in lieu of a continuation  
22 of the cease and desist order, the state risk manager may levy a fine  
23 upon the program in an amount not less than \$300 and not more than  
24 \$10,000. The order levying the fine must specify the period within  
25 which the fine must be fully paid. The period within which the fines  
26 must be paid must not be less than 15 and not more than 30 days from  
27 the date of the order. Upon failure to pay the fine when due, the  
28 state risk manager shall request the attorney general to bring a  
29 civil action on the state risk manager's behalf to collect the fine.  
30 The state risk manager shall pay any fine collected to the state  
31 treasurer for deposit into the general fund.

32 (4) Each program approved by the state risk manager shall  
33 annually file a report with the state risk manager providing:

34 (a) Details of any changes in the articles of incorporation,  
35 bylaws, charter, trust agreement, or other agreement among the  
36 participating small business entities;

37 (b) Copies of all the insurance coverage documents;

38 (c) A description of the program structure, including  
39 participants' retention, program retention, and excess insurance  
40 limits and attachment point;

1 (d) An actuarial analysis;  
2 (e) A list of contractors and service providers;  
3 (f) The financial and loss experience of the program; and  
4 (g) Other information as required by rule of the state risk  
5 manager.

6 (5) A program requiring the state risk manager's approval may not  
7 engage in an act or practice that in any respect significantly  
8 differs from the management and operation plan that formed the basis  
9 for the state risk manager's approval of the program unless the  
10 program first notifies the state risk manager in writing and obtains  
11 the state risk manager's approval. The state risk manager shall  
12 approve or disapprove the proposed change within 60 days of receipt  
13 of the notice. If the state risk manager denies a requested change,  
14 the state risk manager shall specify in detail the reasons for the  
15 denial and the manner in which the program would fail to meet the  
16 requirements of this chapter or any rules adopted in accordance with  
17 this chapter.

18 NEW SECTION. **Sec. 9.** (1) The state risk manager shall establish  
19 and charge an investigation fee in an amount necessary to cover the  
20 costs for the initial review and approval of a program. The fee must  
21 accompany the initial submission of the plan of management and  
22 operation required under section 6 of this act.

23 (2) The costs of subsequent reviews and investigations must be  
24 charged to the program being reviewed or investigated in accordance  
25 with the actual time and expenses incurred in the review or  
26 investigation.

27 (3) Any program failing to remit its assessment when due is  
28 subject to denial of permission to operate or to a cease and desist  
29 order until the assessment is paid.

30 NEW SECTION. **Sec. 10.** (1) A program may by resolution of the  
31 program designate a person having experience with investments or  
32 financial matters as treasurer of the program. The program must  
33 require a bond obtained from a surety company in an amount and under  
34 the terms and conditions that the program finds will protect against  
35 loss arising from mismanagement or malfeasance in investing and  
36 managing program funds. The program may pay the premium on the bond.



1 (2) All interest and earnings collected on program funds belong  
2 to the program and must be deposited to the program's credit in the  
3 proper program account.

4 NEW SECTION. **Sec. 11.** (1) An employee or official of a  
5 participating small business entity in a program may not directly or  
6 indirectly receive anything of value for services rendered in  
7 connection with the operation and management of a program other than  
8 the salary and benefits provided by his or her employer or the  
9 reimbursement of expenses reasonably incurred in furtherance of the  
10 operation or management of the program. An employee or official of a  
11 participating small business entity in a program may not accept or  
12 solicit anything of value for personal benefit or for the benefit of  
13 others under circumstances in which it can be reasonably inferred  
14 that the employee's or official's independence of judgment is  
15 impaired with respect to the management and operation of the program.

16 (2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of  
17 insurance producers and surplus line brokers by a program.

18 NEW SECTION. **Sec. 12.** A program approved in accordance with  
19 this chapter is exempt from insurance premium taxes, fees assessed  
20 under chapters 48.02, 48.32, and 48.32A RCW, business and occupation  
21 taxes imposed under chapter 82.04 RCW, and any assigned risk plan or  
22 joint underwriting association otherwise required by law. This  
23 section does not apply to or provide exemptions for insurance  
24 companies issuing policies to cover program risks and third-party  
25 administrators or insurance producers serving the program.

26 NEW SECTION. **Sec. 13.** (1) Any person who files, reports, or  
27 furnishes other information required under this title, required by  
28 the state risk manager under the authority granted under this title,  
29 or which is useful to the state risk manager in the administration of  
30 this title is immune from liability in any civil action or suit  
31 arising from the filing of any such report or furnishing such  
32 information to the state risk manager, unless actual malice, fraud,  
33 or bad faith is shown.

34 (2) The state risk manager and his or her agents and employees  
35 are immune from liability in any civil action or suit arising from  
36 the publication of any report or bulletin or from dissemination of

1 information related to the official activities of the state risk  
2 manager unless actual malice, fraud, or bad faith is shown.

3 (3) The immunity granted under this section is in addition to any  
4 common law or statutory privilege or immunity enjoyed by such person.  
5 This section is not intended to abrogate or modify in any way such  
6 common law or statutory privilege or immunity.

7 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act  
8 constitute a new chapter in Title 48 RCW.

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