PSSB 6331
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AN ACT Relating to captive insurance and independently procured commercial insurance; amending RCW 48.14.020, 48.14.095, and 48.15.160; adding a new chapter to Title 48 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The legislature finds that creating a framework for Washington corporations to manage their risks through captive insurers will facilitate the growth and safety of those businesses and protect the public interest. The legislature further finds that captive insurance promotes prudent risk management and provides access to insurance and reinsurance markets that may not be available to Washington businesses otherwise. The legislature believes that encouraging the use of captive insurance will support those who rely upon the strength and stability of employers in this state.

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

(1) "Affiliate" means an entity directly or indirectly controlling, controlled by, or under common control with another

entity. "Affiliate" also means any person that holds an insured interest because that person has or had an employment or sales contract with an insured person.

(2) "Control" means possession of the power to direct the management and policies of an entity through ownership of voting securities, by contract, or otherwise.

(3) "Exempt commercial purchaser" has the same meaning as provided in RCW 48.15.010.

(4) "Washington captive insurer" means an insurance company with the following characteristics:

(a) It is owned by a corporation that has its principal place of business in Washington and is not itself an insurer;

(b) It insures risks of the parent corporation, the parent corporation's other affiliates, or both; and

(c) It is licensed as a captive insurer by the jurisdiction in which it is domiciled.

NEW SECTION. **Sec. 3.** (1) The ability to independently procure insurance in this state is limited to persons who qualify either as an exempt commercial purchaser or as an affiliate of a Washington captive insurer.

(2) Prior to independently procuring insurance in this state, a person other than an affiliate of a Washington captive insurer must establish that they qualify as an exempt commercial purchaser. To establish that a person qualifies as an exempt commercial purchaser, the person must file a form, in the format prescribed by the commissioner, attesting that the person qualifies as an exempt commercial purchaser and providing additional information as required by the commissioner. The commissioner may request records to confirm that the person qualifies as an exempt commercial purchaser.

(3) Every exempt commercial purchaser whose home state is Washington state and who procures, causes to be procured, continues, or renews insurance with an unauthorized insurer, including a person or self-insurer who procures or continues excess loss, catastrophe, or other insurance, upon a subject of insurance that is resident, located, or to be performed in this state, other than insurance lawfully procured through a surplus lines broker under chapter 48.15 RCW, must within sixty days after the date the insurance was bound or the effective date of the insurance, whichever is later, file a report with the commissioner in a form prescribed by the

commissioner. The report must show the name and address of the exempt commercial purchaser, name and address of the unauthorized insurer, a general description of the coverage, the binding or effective date, the policy number, the amount of premium currently charged, and additional pertinent information required by the commissioner. The exempt commercial purchaser must attach the policy declaration pages to the report.

(4) Persons who qualify as exempt commercial purchasers may independently procure unauthorized insurance that is properly classified as property insurance under RCW 48.11.040 or general casualty insurance under RCW 48.11.070.

NEW SECTION. **Sec. 4.** (1) An exempt commercial purchaser must, on or before the first day of March of each year, file with the commissioner a verified statement of all independently procured insurance transacted during the preceding calendar year.

(2) The statement must be in a form and format as prescribed by the commissioner and must show:

(a) Aggregate of net premiums; and

(b) Additional information as required by the commissioner.

(3) This section does not apply to unauthorized property and casualty insurance independently procured by an insured when the insured's home state is a state other than this state, or to nonprofit organizations or public entities in Washington, including institutions of higher education as defined in RCW 28B.10.016.

NEW SECTION. **Sec. 5.** (1) On or before the first day of March of each year, an exempt commercial purchaser must remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on independently procured insurance subject to tax transacted by the exempt commercial purchaser during the preceding calendar year, as shown by the annual statement filed with the commissioner, and at the same rates as are applicable to the premiums of authorized foreign insurers under this code. The tax when collected must be credited to the general fund.

(2) For property and casualty insurance other than industrial insurance under Title 51 RCW, when this state is the exempt commercial purchaser's home state, the exempt commercial purchaser must pay premium taxes in accordance with the following:

(a) If the independently procured insurance covers risk or exposures located inside of the United States, its territories, or both, the tax so payable must be computed upon the entire premium under subsection (1) of this section, without regard to whether the policy covers risk or exposures that are located in this state; and

(b) If the independently procured insurance covers risk or exposures located outside of the United States and its territories, no tax under subsection (1) of this section is due or payable for the premium properly allocable to the risks and exposures located outside the United States and its territories.

(3) This section does not apply to nonprofit organizations or public entities in Washington, including institutions of higher education as defined in RCW 28B.10.016.

NEW SECTION. **Sec. 6.** (1) An exempt commercial purchaser who fails to file a report as required by the commissioner in section 3(3) of this act is subject to a one thousand dollar fine, per violation.

(2) If an exempt commercial purchaser fails to file the annual statement and fails to remit the tax provided by section 5 of this act, by the last day of the month in which the tax becomes due, the exempt commercial purchaser must pay the penalties and interest provided in RCW 48.14.060. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must be paid to the state treasurer and credited to the general fund.

(3) This section does not apply to nonprofit organizations or public entities in Washington, including institutions of higher education as defined in RCW 28B.10.016.

NEW SECTION. **Sec. 7.** (1) Within one hundred twenty days after the effective date of this section, a Washington captive insurer must register with the commissioner. Upon furnishing evidence of good standing in its state of domicile and paying a tax of two thousand five hundred dollars, a Washington captive insurer is entitled to receive a certificate of captive authority as a registered Washington captive insurer. No other documents, deposits, or payments may be required to obtain this certificate.

(2) A registered Washington captive insurer may renew its certificate of captive authority for successive periods of twelve months each by paying a tax not to exceed two thousand five hundred dollars for each such period.

(3) A registered Washington captive insurer may provide insurance to a parent corporation that has its principal place of business in this state, to the parent corporation's other affiliates, or both.

(4) A registered Washington captive insurer may insure risks of its affiliates and obtain or provide reinsurance for risks insured in this state.

NEW SECTION. **Sec. 8.** (1) On or before the first day of March of each year, a registered Washington captive insurer must remit to the state treasurer through the commissioner a tax in the amount of two percent of the premiums, exclusive of returned premiums and sums collected to cover federal and state taxes and examination fees, for insurance directly procured by and provided to its parent or another affiliate for Washington risks during the preceding calendar year. The tax when collected must be credited to the general fund.

(2) For the purposes of this section, "Washington risks" means the share of risk covered by the premiums that is allocable to this state, based upon where the underlying risks are located or where the losses or injuries giving rise to covered claims arise. The captive insurer may use any reasonable method of determining such an allocation, including actuarial analysis or use of a proxy such as sales, property value, or payroll. It is irrelevant to the determination of Washington risks whether a claim is paid directly by the captive insurer or whether the captive insurer indemnifies its insured after the insured makes a payment related to the claim. "Washington risks" do not include any risks covered by industrial insurance under Title 51 RCW.

(3) If a registered Washington captive insurer fails to remit the tax provided by this section by the last day of the month in which the tax becomes due, the registered Washington captive insurer must pay the penalties and interest provided in RCW 48.14.060. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must be paid to the state treasurer and credited to the general fund.

NEW SECTION. **Sec. 9.** The commissioner may adopt rules as necessary to implement this act, but such rules must recognize the differences between captive insurance and commercial insurance offered to Washington insureds by unrelated companies.

Sec. 10. RCW 48.14.020 and 2016 c 133 s 1 are each amended to read as follows:

(1) Subject to other provisions of this chapter, each authorized insurer except title insurers and registered Washington captive insurers as defined in section 2 of this act shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (3) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2)(a) The taxes imposed in this section do not apply to amounts received by any life and disability insurer for health care services included within the definition of practice of dentistry under RCW 18.32.020 except amounts received for pediatric oral services that qualify as coverage for the minimum essential coverage requirement under P.L. 111-148 (2010), as amended, and for stand-alone family dental plans as defined in RCW 43.71.080(4)(a), only when offered in the individual market, as defined in RCW 48.43.005((~~(27)~~)), or to a small group, as defined in RCW 48.43.005((~~(33)~~)).

(b) Beginning January 1, 2014, moneys collected for premiums written on qualified health benefit plans and qualified dental plans offered through the health benefit exchange under chapter 43.71 RCW must be deposited in the health benefit exchange account under RCW 43.71.060.

(3) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(4) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(5) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.

(6) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums.

Sec. 11. RCW 48.14.095 and 2008 c 217 s 8 are each amended to read as follows:

(1) This section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to comply with RCW 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or 48.46.027(1).

(2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

(3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

(4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

(5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(6) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW.

(8) This section does not apply to premiums on insurance that is either independently procured by an exempt commercial purchaser or issued by a Washington captive insurer under chapter 48.--- RCW (the new chapter created in section 13 of this act).

Sec. 12. RCW 48.15.160 and 2008 c 217 s 11 are each amended to read as follows:

(1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance, to insurance independently procured by an exempt commercial purchaser or issued by a Washington captive insurer under chapter 48.--- RCW (the new chapter created in section 13 of this act), or to the following insurances when so placed by licensed insurance producers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Insurance producers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The insurance producer shall furnish to the commissioner at the commissioner's request and on forms as designated and furnished by him or her a report of all such coverages so placed in a designated calendar year.

NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. **Sec. 14.** If any provision of this act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 15.** Sections 10 through 12 of this act apply both retroactively and prospectively.

NEW SECTION. **Sec. 16.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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