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HOUSE BILL 2493

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Kirby and Vick

1 AN ACT Relating to captive insurers; amending RCW 48.14.020,  
2 48.14.095, 48.15.160, and 82.04.320; adding a new chapter to Title 48  
3 RCW; creating a new section; and declaring an emergency.

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

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

15 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the  
16 Washington captive insurer act.

17 NEW SECTION. **Sec. 3.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires  
19 otherwise.

1 (1) "Affiliate" means an entity directly or indirectly  
2 controlling, controlled by, or under common control with another  
3 entity. "Affiliate" also means any person that holds an insured  
4 interest because that person has or had an employment or sales  
5 contract with an insured person.

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

9 (3) "Washington captive insurer" means an insurance company with  
10 the following characteristics:

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

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

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

17 NEW SECTION. **Sec. 4.** (1) Within one hundred twenty days after  
18 the effective date of this section, a Washington captive insurer must  
19 register with the commissioner. Upon furnishing evidence of good  
20 standing in its state of domicile and paying a tax of two thousand  
21 five hundred dollars, a Washington captive insurer is entitled to  
22 receive a certificate of captive authority as a registered Washington  
23 captive insurer. No other documents, deposits, or payments may be  
24 required to obtain this certificate.

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

29 (3) A registered Washington captive insurer is not liable for  
30 premium tax. No direct placement, self-procurement, or similar tax  
31 may be levied on the payment of premiums to a registered Washington  
32 captive insurer.

33 NEW SECTION. **Sec. 5.** (1) A registered Washington captive  
34 insurer may provide insurance to a parent corporation that has its  
35 principal place of business in this state, to the parent  
36 corporation's other affiliates, or both.

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

4 **Sec. 6.** RCW 48.14.020 and 2016 c 133 s 1 are each amended to  
5 read as follows:

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

24 (2)(a) The taxes imposed in this section do not apply to amounts  
25 received by any life and disability insurer for health care services  
26 included within the definition of practice of dentistry under RCW  
27 18.32.020 except amounts received for pediatric oral services that  
28 qualify as coverage for the minimum essential coverage requirement  
29 under P.L. 111-148 (2010), as amended, and for stand-alone family  
30 dental plans as defined in RCW 43.71.080(4)(a), only when offered in  
31 the individual market(~~(7)~~) as defined in RCW 48.43.005(~~((27))~~), or to  
32 a small group(~~(7)~~) as defined in RCW 48.43.005(~~((33))~~).

33 (b) Beginning January 1, 2014, moneys collected for premiums  
34 written on qualified health benefit plans and qualified dental plans  
35 offered through the health benefit exchange under chapter 43.71 RCW  
36 must be deposited in the health benefit exchange account under RCW  
37 43.71.060.

38 (3) In the case of insurers which require the payment by their  
39 policyholders at the inception of their policies of the entire

1 premium thereon in the form of premiums or premium deposits which are  
2 the same in amount, based on the character of the risks, regardless  
3 of the length of term for which such policies are written, such tax  
4 shall be in the amount of two percent of the gross amount of such  
5 premiums and premium deposits upon policies on risks resident,  
6 located, or to be performed in this state, in force as of the thirty-  
7 first day of December next preceding, less the unused or unabsorbed  
8 portion of such premiums and premium deposits computed at the average  
9 rate thereof actually paid or credited to policyholders or applied in  
10 part payment of any renewal premiums or premium deposits on one-year  
11 policies expiring during such year.

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

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

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

1       **Sec. 7.** RCW 48.14.095 and 2008 c 217 s 8 are each amended to  
2 read as follows:

3       (1) This section applies to any insurer or taxpayer, as defined  
4 in RCW 48.14.0201, violating or failing to comply with RCW  
5 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or  
6 48.46.027(1).

7       (2) Except as provided in subsection (7) of this section, RCW  
8 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers  
9 identified in subsection (1) of this section.

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

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

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

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

33       (7) This section does not apply to premiums on insurance procured  
34 by a licensed surplus line broker under chapter 48.15 RCW or premiums  
35 on insurance issued by a Washington captive insurer as defined in  
36 section 3 of this act.

37       **Sec. 8.** RCW 48.15.160 and 2008 c 217 s 11 are each amended to  
38 read as follows:

1 (1) The provisions of this chapter controlling the placing of  
2 insurance with unauthorized insurers shall not apply to reinsurance,  
3 to insurance placed with a Washington captive insurer as defined in  
4 section 3 of this act, or to the following insurances when so placed  
5 by licensed insurance producers of this state:

6 (a) Ocean marine and foreign trade insurances.

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

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

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

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

30 **Sec. 9.** RCW 82.04.320 and 1961 c 15 s 82.04.320 are each amended  
31 to read as follows:

32 This chapter shall not apply to any person in respect to  
33 insurance business upon which a tax based on gross premiums is paid  
34 to the state or to any Washington captive insurer as defined in  
35 section 3 of this act: PROVIDED, That the provisions of this section  
36 shall not exempt any person engaging in the business of representing  
37 any insurance company, whether as general or local agent, or acting  
38 as broker for such companies: PROVIDED FURTHER, That the provisions  
39 of this section shall not exempt any bonding company from tax with

1 respect to gross income derived from the completion of any contract  
2 as to which it is a surety, or as to any liability as successor to  
3 the liability of the defaulting contractor.

4 NEW SECTION. **Sec. 10.** Sections 1 through 5 of this act  
5 constitute a new chapter in Title 48 RCW.

6 NEW SECTION. **Sec. 11.** Sections 6 through 9 of this act apply  
7 both retroactively and prospectively.

8 NEW SECTION. **Sec. 12.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 13.** This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of  
14 the state government and its existing public institutions, and takes  
15 effect immediately.

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