

2 SHB 2480 - S COMM AMD

3 By Committee on Financial Insititutions & Insurance

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. As used in this chapter, the following
8 terms shall have the respective meanings hereinafter set forth, unless
9 the context shall otherwise require:

10 (1) An "affiliate" of, or person "affiliated" with, a specific
11 person, is a person that directly, or indirectly through one or more
12 intermediaries, controls, or is controlled by, or is under common
13 control with, the person specified.

14 (2) The term "control," including the terms "controlling,"
15 "controlled by," and "under common control with," means the possession,
16 direct or indirect, of the power to direct or cause the direction of
17 the management and policies of a person, whether through the ownership
18 of voting securities, by contract other than a commercial contract for
19 goods or nonmanagement services, or otherwise, unless the power is the
20 result of an official position with or corporate office held by the
21 person. Control shall be presumed to exist if any person, directly or
22 indirectly, owns, controls, holds with the power to vote, or holds
23 proxies representing, ten percent or more of the voting securities of
24 any other person. This presumption may be rebutted by a showing made
25 in a manner similar to that provided by section 5(11) of this act that
26 control does not exist in fact. The commissioner may determine, after
27 furnishing all persons in interest notice and opportunity to be heard
28 and making specific findings of fact to support such determination,

1 that control exists in fact, notwithstanding the absence of a
2 presumption to that effect.

3 (3) An "insurance holding company system" consists of two or more
4 affiliated persons, one or more of which is an insurer.

5 (4) The term "insurer" shall have the same meaning as set forth in
6 RCW 48.01.050, except that it shall not include agencies, authorities,
7 or instrumentalities of the United States, its possessions and
8 territories, the commonwealth of Puerto Rico, the District of Columbia,
9 or a state or political subdivision of a state.

10 (5) A "person" is an individual, a corporation, a partnership, an
11 association, a joint stock company, a trust, an unincorporated
12 organization, any similar entity or any combination of the foregoing
13 acting in concert, but shall not include any joint venture partnership
14 exclusively engaged in owning, managing, leasing, or developing real or
15 tangible personal property.

16 (6) A "securityholder" of a specified person is one who owns any
17 security of such person, including common stock, preferred stock, debt
18 obligations, and any other security convertible into or evidencing the
19 right to acquire any of the foregoing.

20 (7) A "subsidiary" of a specified person is an affiliate controlled
21 by such person directly or indirectly through one or more
22 intermediaries.

23 (8) The term "voting security" shall include any security
24 convertible into or evidencing a right to acquire a voting security."

25 NEW SECTION. **Sec. 2.** If an insurer ceases to control a
26 subsidiary, it shall dispose of any investment therein within three
27 years from the time of the cessation of control or within such further
28 time as the commissioner may prescribe, unless at any time after such
29 investment shall have been made, such investment shall have met the

1 requirements for investment under any other section of this Title, and
2 the insurer has notified the commissioner thereof."

3 "NEW SECTION. **Sec. 3.** (1) No person other than the issuer
4 shall make a tender offer for or a request or invitation for tenders
5 of, or enter into any agreement to exchange securities of, seek to
6 acquire, or acquire, in the open market or otherwise, any voting
7 security of a domestic insurer if, after the consummation thereof, such
8 person would, directly or indirectly, or by conversion or by exercise
9 of any right to acquire, be in control of such insurer, and no person
10 shall enter into an agreement to merge with or otherwise to acquire
11 control of a domestic insurer or any person controlling a domestic
12 insurer unless, at the time any such offer, request, or invitation is
13 made or any such agreement is entered into, or prior to the acquisition
14 of such securities if no offer or agreement is involved, such person
15 has filed with the commissioner and has sent to such insurer, a
16 statement containing the information required by this section and such
17 offer, request, invitation, agreement, or acquisition has been approved
18 by the commissioner in the manner prescribed in this section.

19 For purposes of this section a domestic insurer shall include any
20 person controlling a domestic insurer unless such person as determined
21 by the commissioner is either directly or through its affiliates
22 primarily engaged in business other than the business of insurance.
23 However, such person shall file a preacquisition notification with the
24 commissioner containing the information set forth in section 4(3)(a) of
25 this act sixty days prior to the proposed effective date of the
26 acquisition. Failure to file is subject to section 4(5)(c) of this
27 act. For the purposes of this section, "person" shall not include any
28 securities broker holding, in usual and customary broker's function,

1 less than twenty percent of the voting securities of an insurance
2 company or of any person which controls an insurance company.

3 (2) The statement to be filed with the commissioner hereunder shall
4 be made under oath or affirmation and shall contain the following
5 information:

6 (a) The name and address of each person by whom or on whose behalf
7 the merger or other acquisition of control referred to in subsection
8 (1) of this section is to be effected, hereinafter called "acquiring
9 party," and:

10 (i) If such person is an individual, his or her principal
11 occupation and all offices and positions held during the past five
12 years, and any conviction of crimes other than minor traffic violations
13 during the past ten years;

14 (ii) If such person is not an individual, a report of the nature of
15 its business operations during the past five years or for such lesser
16 period as such person and any predecessors thereof shall have been in
17 existence; an informative description of the business intended to be
18 done by such person's subsidiaries; any convictions of crimes during
19 the past ten years; and a list of all individuals who are or who have
20 been selected to become directors or executive officers of such person,
21 or who perform or will perform functions appropriate to such positions.
22 Such list shall include for each such individual the information
23 required by (a)(i) of this subsection.

24 (b) The source, nature, and amount of the consideration used or to
25 be used in effecting the merger or other acquisition of control, a
26 description of any transaction wherein funds were or are to be obtained
27 for any such purpose, including any pledge of the insurer's stock, or
28 the stock of any of its subsidiaries or controlling affiliates, and the
29 identity of persons furnishing such consideration: PROVIDED, HOWEVER,
30 That where a source of such consideration is a loan made in the

1 lender's ordinary course of business, the identity of the lender shall
2 remain confidential, if the person filing such statement so requests.

3 (c) Fully audited financial information as to the earnings and
4 financial condition of each acquiring party for the preceding five
5 fiscal years of each such acquiring party, or for such lesser period as
6 such acquiring party and any predecessors thereof shall have been in
7 existence, and similar unaudited information as of a date not earlier
8 than ninety days prior to the filing of the statement.

9 (d) Any plans or proposals which each acquiring party may have to
10 liquidate such insurer, to sell its assets or merge or consolidate it
11 with any person, or to make any other material change in its business
12 or corporate structure or management.

13 (e) The number of shares of any security referred to in subsection
14 (1) of this section which each acquiring party proposes to acquire, and
15 the terms of the offer, request, invitation, agreement, or acquisition
16 referred to in subsection (1) of this section.

17 (f) The amount of each class of any security referred to in
18 subsection (1) of this section which is beneficially owned or
19 concerning which there is a right to acquire beneficial ownership by
20 each acquiring party.

21 (g) A full description of any contracts, arrangements, or
22 understandings with respect to any security referred to in subsection
23 (1) of this section in which any acquiring party is involved, including
24 but not limited to transfer of any of the securities, joint ventures,
25 loan or option arrangements, puts or calls, guarantees of loans,
26 guarantees against loss or guarantees of profits, division of losses or
27 profits, or the giving or withholding of proxies. Such description
28 shall identify the persons with whom such contracts, arrangements, or
29 understandings have been entered into.

1 (h) A description of the purchase of any security referred to in
2 subsection (1) of this section during the twelve calendar months
3 preceding the filing of the statement, by any acquiring party,
4 including the dates of purchase, names of the purchasers, and
5 consideration paid or agreed to be paid therefor.

6 (i) A description of any recommendations to purchase any security
7 referred to in subsection (1) of this section made during the twelve
8 calendar months preceding the filing of the statement, by any acquiring
9 party, or by anyone based upon interviews or at the suggestion of such
10 acquiring party.

11 (j) Copies of all tender offers for, requests or invitations for
12 tenders of, exchange offers for, and agreements to acquire or exchange
13 any securities referred to in subsection (1) of this section, and, if
14 distributed, of additional soliciting material relating thereto.

15 (k) The term of any agreement, contract, or understanding made with
16 or proposed to be made with any broker-dealer as to solicitation or
17 securities referred to in subsection (1) of this section for tender,
18 and the amount of any fees, commissions, or other compensation to be
19 paid to broker-dealers with regard thereto.

20 (l) Such additional information as the commissioner may by rule or
21 regulation prescribe as necessary or appropriate for the protection of
22 policyholders of the insurer or in the public interest.

23 If the person required to file the statement referred to in
24 subsection (1) of this section is a partnership, limited partnership,
25 syndicate, or other group, the commissioner may require that the
26 information called for by (a) through (l) of this subsection shall be
27 given with respect to each partner of such partnership or limited
28 partnership, each member of such syndicate or group, and each person
29 who controls such partner or member. If any such partner, member, or
30 person is a corporation, or the person required to file the statement

1 referred to in subsection (1) of this section is a corporation the
2 commissioner may require that the information called for by (a) through
3 (1) of this subsection shall be given with respect to such corporation,
4 each officer and director of such corporation, and each person who is
5 directly or indirectly the beneficial owner of more than ten percent of
6 the outstanding voting securities of such corporation.

7 If any material change occurs in the facts set forth in the
8 statement filed with the commissioner and sent to such insurer pursuant
9 to this section, an amendment setting forth such change, together with
10 copies of all documents and other material relevant to such change,
11 shall be filed with the commissioner and sent to such insurer within
12 two business days after the person learns of such change.

13 (3) If any offer, request, invitation, agreement, or acquisition
14 referred to in subsection (1) of this section is proposed to be made by
15 means of a registration statement under the securities act of 1933 or
16 in circumstances requiring the disclosure of similar information under
17 the securities exchange act of 1934, or under a state law requiring
18 similar registration or disclosure, the person required to file the
19 statement referred to in subsection (1) of this section may utilize
20 such documents in furnishing the information called for by that
21 statement.

22 (4)(a) The commissioner shall approve any merger or other
23 acquisition of control referred to in subsection (1) of this section
24 unless, after a public hearing thereon, he or she finds that:

25 (i) After the change of control, the domestic insurer referred to
26 in subsection (1) of this section would not be able to satisfy the
27 requirements for the issuance of a license to write the line or lines
28 of insurance for which it is presently licensed;

29 (ii) The effect of the merger or other acquisition of control would
30 be substantially to lessen competition in insurance in this state or

1 tend to create a monopoly therein. In applying the competitive
2 standard in (a)(ii) of this subsection:

3 (A) The informational requirements of section 4(3)(a) of this act
4 and the standards of section 4(4)(b) of this act shall apply;

5 (B) The merger or other acquisition shall not be disapproved if the
6 commissioner finds that any of the situations meeting the criteria
7 provided by section 4(4)(c) of this act exist; and

8 (C) The commissioner may condition the approval of the merger or
9 other acquisition on the removal of the basis of disapproval within a
10 specified period of time;

11 (iii) The financial condition of any acquiring party is such as
12 might jeopardize the financial stability of the insurer, or prejudice
13 the interest of its policyholders;

14 (iv) The plans or proposals which the acquiring party has to
15 liquidate the insurer, sell its assets or consolidate or merge it with
16 any person, or to make any other material change in its business or
17 corporate structure or management, are unfair and unreasonable to
18 policyholders of the insurer and not in the public interest;

19 (v) The competence, experience, and integrity of those persons who
20 would control the operation of the insurer are such that it would not
21 be in the interest of policyholders of the insurer and of the public to
22 permit the merger or other acquisition of control; or

23 (vi) The acquisition is likely to be hazardous or prejudicial to
24 the insurance-buying public.

25 (b) The commissioner shall approve any exchange or other
26 acquisition of control referred to in RCW 48.31A.020 within sixty days
27 after he or she declares the statement filed pursuant to RCW 48.31A.020
28 to be complete and after holding a public hearing. At such hearing,
29 the person filing the statement, the insurer, and any person whose
30 significant interest is determined by the commissioner to be affected

1 thereby shall have the right to present evidence, examine and cross-
2 examine witnesses, and offer oral and written arguments and in
3 connection therewith shall be entitled to conduct discovery proceedings
4 in the same manner as is allowed in the superior court of this state.
5 All discovery proceedings shall be concluded not later than three days
6 prior to the commencement of the public hearing.

7 (c) The commissioner may retain at the acquiring person's expense
8 any attorneys, actuaries, accountants, and other experts not otherwise
9 a part of the commissioner's staff as may be reasonably necessary to
10 assist the commissioner in reviewing the proposed acquisition of
11 control. All reasonable costs of any hearing held pursuant to this
12 section, as determined by the commissioner, including costs associated
13 with the commissioner's use of investigatory, professional, and other
14 necessary personnel, mailing of required notices and other information,
15 and use of equipment or facilities, shall be paid before issuance of
16 the commissioner's order by the acquiring person.

17 (5) The provisions of this section shall not apply to:

18 (a) Any transaction which is subject to the provisions of RCW
19 48.31.010, dealing with the merger or consolidation of two or more
20 insurers.

21 (b) Any offer, request, invitation, agreement, or acquisition which
22 the commissioner by order shall exempt therefrom as: (i) Not having
23 been made or entered into for the purpose and not having the effect of
24 changing or influencing the control of a domestic insurer, or (ii)
25 otherwise not comprehended within the purposes of this section.

26 (6) The following shall be violations of this section:

27 (a) The failure to file any statement, amendment, or other material
28 required to be filed pursuant to subsection (1) or (2) of this section;
29 or

1 (b) The effectuation or any attempt to effectuate an acquisition of
2 control of, or merger with, a domestic insurer unless the commissioner
3 has given approval thereto.

4 (7) The courts of this state are hereby vested with jurisdiction
5 over every person not resident, domiciled, or authorized to do business
6 in this state who files a statement with the commissioner under this
7 section, and over all actions involving such person arising out of
8 violations of this section, and each such person shall be deemed to
9 have performed acts equivalent to and constituting an appointment by
10 such a person of the commissioner to be the person's true and lawful
11 attorney upon whom may be served all lawful process in any action,
12 suit, or proceeding arising out of violations of this section. Copies
13 of all such lawful process shall be served on the commissioner and
14 transmitted by registered or certified mail by the commissioner to such
15 person at the person's last known address."

16 "NEW SECTION. Sec. 4. (1) The following definitions shall
17 apply for the purposes of this section only:

18 (a) "Acquisition" means any agreement, arrangement, or activity the
19 consummation of which results in a person acquiring directly or
20 indirectly the control of another person, and includes but is not
21 limited to the acquisition of voting securities, the acquisition of
22 assets, bulk reinsurance, and mergers.

23 (b) An "involved insurer" includes an insurer which either acquires
24 or is acquired, is affiliated with an acquirer or acquired, or is the
25 result of a merger.

26 (2)(a) Except as exempted in (b) of this subsection, this section
27 applies to any acquisition in which there is a change in control of an
28 insurer authorized to do business in this state.

29 (b) This section shall not apply to the following:

- 1 (i) An acquisition subject to approval or disapproval by the
2 commissioner pursuant to section 3 of this act;
- 3 (ii) A purchase of securities solely for investment purposes so
4 long as such securities are not used by voting or otherwise to cause or
5 attempt to cause the substantial lessening of competition in any
6 insurance market in this state. If a purchase of securities results in
7 a presumption of control under section 1(2) of this act, it is not
8 solely for investment purposes unless the commissioner of the insurer's
9 state of domicile accepts a disclaimer of control or affirmatively
10 finds that control does not exist and such disclaimer action or
11 affirmative finding is communicated by the domiciliary commissioner to
12 the commissioner of this state;
- 13 (iii) The acquisition of a person by another person when both
14 persons are neither directly nor through affiliates primarily engaged
15 in the business of insurance, if preacquisition notification is filed
16 with the commissioner in accordance with subsection (3)(a) of this
17 section sixty days prior to the proposed effective date of the
18 acquisition. However, such preacquisition notification is not required
19 for exclusion from this section if the acquisition would otherwise be
20 excluded from this section by this subsection (2)(b);
- 21 (iv) The acquisition of already affiliated persons;
- 22 (v) An acquisition if, as an immediate result of the acquisition:
- 23 (A) In no market would the combined market share of the involved
24 insurers exceed five percent of the total market;
- 25 (B) There would be no increase in any market share; or
- 26 (C) In no market would:
- 27 (I) The combined market share of the involved insurers exceed
28 twelve percent of the total market; and
- 29 (II) The market share increase by more than two percent of the
30 total market.

1 For the purpose of (b)(v) of this subsection, a market means direct
2 written insurance premium in this state for a line of business as
3 contained in the annual statement required to be filed by insurers
4 licensed to do business in this state;

5 (vi) An acquisition for which a preacquisition notification would
6 be required pursuant to this section due solely to the resulting effect
7 on the ocean marine insurance line of business;

8 (vii) An acquisition of an insurer whose domiciliary commissioner
9 affirmatively finds: That such insurer is in failing condition; there
10 is a lack of feasible alternative to improving such condition; the
11 public benefits of improving such insurer's condition through the
12 acquisition exceed the public benefits that would arise from not
13 lessening competition; and such findings are communicated by the
14 domiciliary commissioner to the commissioner of this state.

15 (3) An acquisition covered by subsection (2) of this section may be
16 subject to an order pursuant to subsection (5) of this section unless
17 the acquiring person files a preacquisition notification and the
18 waiting period has expired. The acquired person may file a
19 preacquisition notification.

20 (a) The preacquisition notification shall be in such form and
21 contain such information as prescribed by the commissioner relating to
22 those markets which, under subsection (2)(b)(v) of this section, cause
23 the acquisition not to be exempted from the provisions of this section.
24 The commissioner may require such additional material and information
25 as he or she deems necessary to determine whether the proposed
26 acquisition, if consummated, would violate the competitive standard of
27 subsection (4) of this section. The required information may include
28 an opinion of an economist as to the competitive impact of the
29 acquisition in this state accompanied by a summary of the education and

1 experience of such person indicating his or her ability to render an
2 informed opinion.

3 (b) The waiting period required shall begin on the date the
4 commissioner declares the preacquisition notification to be complete
5 and shall end on the earlier of the sixtieth day after the date of such
6 declaration, or termination of the waiting period by the commissioner.
7 Prior to the end of the waiting period, the commissioner on a one-time
8 basis may require the submission of additional needed information
9 relevant to the proposed acquisition, in which event the waiting period
10 shall end on the earlier of the sixtieth day after the commissioner
11 declares he or she has received such additional information or
12 termination of the waiting period by the commissioner.

13 (4)(a) The commissioner may enter an order under subsection (5)(a)
14 of this section with respect to an acquisition if there is substantial
15 evidence that the effect of the acquisition may be substantially to
16 lessen competition in any line of insurance in this state or tend to
17 create a monopoly therein or if the insurer fails to file adequate
18 information in compliance with subsection (3) of this section.

19 (b) In determining whether a proposed acquisition would violate the
20 competitive standard of (a) of this subsection, the commissioner shall
21 consider the following:

22 (i) Any acquisition covered under subsection (2) of this section
23 involving two or more insurers competing in the same market is prima
24 facie evidence of violation of the competitive standards:

25 (A) If the market is highly concentrated and the involved insurers
26 possess the following shares of the market:

27	Insurer A	Insurer B
28	4%	4% or more

1	10%	2% or more
2	15%	1% or more; or

3 (B) If the market is not highly concentrated and the involved
4 insurers possess the following shares of the market:

5	Insurer A	Insurer B
6	5%	5% or more
7	10%	4% or more
8	15%	3% or more
9	19%	1% or more

10 A highly concentrated market is one in which the share of the four
11 largest insurers is seventy-five percent or more of the market.
12 Percentages not shown in the tables are interpolated proportionately to
13 the percentages that are shown. If more than two insurers are
14 involved, exceeding the total of the two columns in the table is prima
15 facie evidence of violation of the competitive standard in (a) of this
16 subsection. For the purpose of (b)(i) of this subsection, the insurer
17 with the largest share of the market shall be deemed to be Insurer A.

18 (ii) There is a significant trend toward increased concentration
19 when the aggregate market share of any grouping of the largest insurers
20 in the market, from the two largest to the eight largest, has increased
21 by seven percent or more of the market over a period of time extending
22 from any base year five to ten years prior to the acquisition up to the
23 time of the acquisition. Any acquisition or merger covered under
24 subsection (2) of this section involving two or more insurers competing
25 in the same market is prima facie evidence of violation of the
26 competitive standard in (a) of this subsection if:

1 (A) There is a significant trend toward increased concentration in
2 the market;

3 (B) One of the insurers involved is one of the insurers in a
4 grouping of such large insurers showing the requisite increase in the
5 market share; and

6 (C) Another involved insurer's market is two percent or more.

7 (iii) For the purposes of (b) of this subsection:

8 (A) The term "insurer" includes any company or group of companies
9 under common management, ownership, or control;

10 (B) The term "market" means the relevant product and geographical
11 markets. In determining the relevant product and geographical markets,
12 the commissioner shall give due consideration to, among other things,
13 the definitions or guidelines, if any, promulgated by the national
14 association of insurance commissioners and to information, if any,
15 submitted by parties to the acquisition. In the absence of sufficient
16 information to the contrary, the relevant product market is assumed to
17 be the direct written insurance premium for a line of business, such
18 line being that used in the annual statement required to be filed by
19 insurers doing business in this state, and the relevant geographical
20 market is assumed to be this state;

21 (C) The burden of showing prima facie evidence of violation of the
22 competitive standard rests upon the commissioner.

23 (iv) Even though an acquisition is not prima facie violative of the
24 competitive standard under (b)(i) and (ii) of this subsection, the
25 commissioner may establish the requisite anticompetitive effect based
26 upon other substantial evidence. Even though an acquisition is prima
27 facie violative of the competitive standard under (b)(i) and (ii) of
28 this subsection, a party may establish the absence of the requisite
29 anticompetitive effect based upon other substantial evidence. Relevant
30 factors in making a determination under (b)(iv) of this subsection

1 include, but are not limited to, the following: Market shares,
2 volatility of ranking of market leaders, number of competitors,
3 concentration, trend of concentration in the industry, and ease of
4 entry and exit into the market.

5 (c) An order may not be entered under subsection (5)(a) of this
6 section if:

7 (i) The acquisition will yield substantial economies of scale or
8 economies in resource utilization that cannot be feasibly achieved in
9 any other way, and the public benefits which would arise from such
10 economies exceed the public benefits which would arise from not
11 lessening competition; or

12 (ii) The acquisition will substantially increase the availability
13 of insurance, and the public benefits of such increase exceed the
14 public benefits which would arise from not lessening competition.

15 (5)(a)(i) If an acquisition violates the standards of this section,
16 the commissioner may enter an order:

17 (A) Requiring an involved insurer to cease and desist from doing
18 business in this state with respect to the line or lines of insurance
19 involved in the violation; or

20 (B) Denying the application of an acquired or acquiring insurer for
21 a license to do business in this state.

22 (ii) Such an order shall not be entered unless: (A) There is a
23 hearing; (B) notice of such hearing is issued prior to the end of the
24 waiting period and not less than fifteen days prior to the hearing; and
25 (C) the hearing is concluded and the order is issued no later than
26 sixty days after the end of the waiting period. Every order shall be
27 accompanied by a written decision of the commissioner setting forth his
28 or her findings of fact and conclusions of law.

29 (iii) An order entered under (a) of this subsection shall not
30 become final earlier than thirty days after it is issued, during which

1 time the involved insurer may submit a plan to remedy the
2 anticompetitive impact of the acquisition within a reasonable time.
3 Based upon such plan or other information, the commissioner shall
4 specify the conditions, if any, under the time period during which the
5 aspects of the acquisition causing a violation of the standards of this
6 section would be remedied and the order vacated or modified.

7 (iv) An order pursuant to (a) of this subsection shall not apply if
8 the acquisition is not consummated.

9 (b) Any person who violates a cease and desist order of the
10 commissioner under (a) of this subsection and while such order is in
11 effect, may, after notice and hearing and upon order of the
12 commissioner, be subject at the discretion of the commissioner to any
13 one or more of the following:

14 (i) A monetary penalty of not more than ten thousand dollars for
15 every day of violation; or

16 (ii) Suspension or revocation of such person's license; or

17 (iii) Both (b)(i) and (b)(ii) of this subsection.

18 (c) Any insurer or other person who fails to make any filing
19 required by this section and who also fails to demonstrate a good faith
20 effort to comply with any such filing requirement, shall be subject to
21 a civil penalty of not more than fifty thousand dollars.

22 (6) Sections 9 (2) and (3) and 11 of this act do not apply to
23 acquisitions covered under subsection (2) of this section."

24 "NEW SECTION. Sec. 5. (1) Every insurer which is authorized to
25 do business in this state and which is a member of an insurance holding
26 company system shall register with the commissioner, except a foreign
27 insurer subject to registration requirements and standards adopted by
28 statute or regulation in the jurisdiction of its domicile which are
29 substantially similar to those contained in:

1 (a) This section;

2 (b) Section 6(1)(a), (2), and (4) of this act; and

3 (c) Either section 6(1)(b) of this act or a provision such as the
4 following: Each registered insurer shall keep current the information
5 required to be disclosed in its registration statement by reporting all
6 material changes or additions within fifteen days after the end of the
7 month in which it learns of each such change or addition.

8 Any insurer which is subject to registration under this section
9 shall register within fifteen days after it becomes subject to
10 registration, and annually thereafter by May 15 of each year for the
11 previous calendar year, unless the commissioner for good cause shown
12 extends the time for registration, and then within such extended time.
13 The commissioner may require any insurer authorized to do business in
14 the state which is a member of a holding company system, and which is
15 not subject to registration under this section, to furnish a copy of
16 the registration statement, the summary specified in subsection (3) of
17 this section or other information filed by such insurance company with
18 the insurance regulatory authority of its domiciliary jurisdiction.

19 (2) Every insurer subject to registration shall file the
20 registration statement on a form prescribed by the commissioner, which
21 shall contain the following current information:

22 (a) The capital structure, general financial condition, ownership,
23 and management of the insurer and any person controlling the insurer;

24 (b) The identity and relationship of every member of the insurance
25 holding company system;

26 (c) The following agreements in force, and transactions currently
27 outstanding or which have occurred during the last calendar year
28 between such insurer and its affiliates:

1 (i) Loans, other investments, or purchases, sales, or exchanges of
2 securities of the affiliates by the insurer or of the insurer by its
3 affiliates;

4 (ii) Purchases, sales, or exchange of assets;

5 (iii) Transactions not in the ordinary course of business;

6 (iv) Guarantees or undertakings for the benefit of an affiliate
7 which result in an actual contingent exposure of the insurer's assets
8 to liability, other than insurance contracts entered into in the
9 ordinary course of the insurer's business;

10 (v) All management agreements, service contracts, and all cost-
11 sharing arrangements;

12 (vi) Reinsurance agreements;

13 (vii) Dividends and other distributions to shareholders; and

14 (viii) Consolidated tax allocation agreements;

15 (d) Any pledge of the insurer's stock, including stock of any
16 subsidiary or controlling affiliate, for a loan made to any member of
17 the insurance holding company system;

18 (e) Other matters concerning transactions between registered
19 insurers and any affiliates as may be included from time to time in any
20 registration forms adopted or approved by the commissioner.

21 (3) All registration statements shall contain a summary outlining
22 all items in the current registration statement representing changes
23 from the prior registration statement.

24 (4) No information need be disclosed on the registration statement
25 filed pursuant to subsection (2) of this section if such information is
26 not material for the purposes of this section. Unless the commissioner
27 by rule, regulation, or order provides otherwise, sales, purchases,
28 exchanges, loans or extensions of credit, investments, or guarantees
29 involving one-half of one percent or less of an insurer's admitted

1 assets as of the 31st day of the previous December shall not be deemed
2 material for purposes of this section.

3 (5) Subject to section 6(2) of this act, each registered insurer
4 shall report to the commissioner all dividends and other distributions
5 to shareholders within fifteen business days following the declaration
6 thereof.

7 (6) Any person within an insurance holding company system subject
8 to registration shall be required to provide complete and accurate
9 information to an insurer, where such information is reasonably
10 necessary to enable the insurer to comply with the provisions of this
11 chapter.

12 (7) The commissioner shall terminate the registration of any
13 insurer which demonstrates that it no longer is a member of an
14 insurance holding company system.

15 (8) The commissioner may require or allow two or more affiliated
16 insurers subject to registration under this section to file a
17 consolidated registration statement.

18 (9) The commissioner may allow an insurer which is authorized to do
19 business in this state and which is part of an insurance holding
20 company system to register on behalf of any affiliated insurer which is
21 required to register under section 5(1) of this act and to file all
22 information and material required to be filed under this section.

23 (10) The provisions of this section shall not apply to any insurer,
24 information, or transaction if and to the extent that the commissioner
25 by rule, regulation, or order shall exempt the same from the provisions
26 of this section.

27 (11) Any person may file with the commissioner a disclaimer of
28 affiliation with any authorized insurer or such a disclaimer may be
29 filed by such insurer or any member of an insurance holding company
30 system. The disclaimer shall fully disclose all material relationships

1 and bases for affiliation between such person and such insurer as well
2 as the basis for disclaiming such affiliation. After a disclaimer has
3 been filed, the insurer shall be relieved of any duty to register or
4 report under this section which may arise out of the insurer's
5 relationship with such person unless and until the commissioner
6 disallows such a disclaimer. The commissioner shall disallow such a
7 disclaimer only after furnishing all parties in interest with notice
8 and opportunity to be heard and after making specific findings of fact
9 to support such disallowance.

10 (12) The failure to file a registration statement or any summary of
11 the registration statement thereto required by this section within the
12 time specified for such filing shall be a violation of this section."

13 "NEW SECTION. Sec. 6. (1)(a) Transactions within a holding
14 company system to which an insurer subject to registration is a party
15 shall be subject to the following standards:

16 (i) The terms shall be fair and reasonable;

17 (ii) Charges or fees for services performed shall be fair and
18 reasonable;

19 (iii) Expenses incurred and payment received shall be allocated to
20 the insurer in conformity with customary insurance accounting practices
21 consistently applied;

22 (iv) The books, accounts, and records of each party to all such
23 transactions shall be so maintained as to clearly and accurately
24 disclose the nature and details of the transactions including such
25 accounting information as is necessary to support the reasonableness of
26 the charges or fees to the respective parties; and

27 (v) The insurer's surplus as regards policyholders following any
28 dividends or distributions to shareholder affiliates shall be

1 reasonable in relation to the insurer's outstanding liabilities and
2 adequate to its financial needs.

3 (b) The following transactions involving a domestic insurer and any
4 person in its holding company system may not be entered into unless the
5 insurer has notified the commissioner in writing of its intention to
6 enter into such transaction at least sixty days prior thereto, or such
7 shorter period as the commissioner may permit, and the commissioner has
8 not disapproved it within such period:

9 (i) Sales, purchases, exchanges, loans or extensions of credit,
10 guarantees, or investments provided such transactions are equal to or
11 exceed: (A) With respect to nonlife insurers, the lesser of three
12 percent of the insurer's admitted assets or twenty-five percent of
13 surplus as regards policyholders; (B) with respect to life insurers,
14 three percent of the insurer's admitted assets; each as of the 31st day
15 of the previous December;

16 (ii) Loans or extensions of credit to any person who is not an
17 affiliate, where the insurer makes such loans or extensions of credit
18 with the agreement or understanding that the proceeds of such
19 transactions, in whole or in substantial part, are to be used to make
20 loans or extensions of credit to, to purchase assets of, or to make
21 investments in, any affiliate of the insurer making such loans or
22 extensions of credit provided such transactions are equal to or exceed:
23 (A) With respect to nonlife insurers, the lesser of three percent of
24 the insurer's admitted assets or twenty-five percent of surplus as
25 regards policyholders; (B) with respect to life insurers, three percent
26 of the insurer's admitted assets; each as of the 31st day of the
27 previous December;

28 (iii) Reinsurance agreements or modifications thereto in which the
29 reinsurance premium or a change in the insurer's liabilities equals or
30 exceeds five percent of the insurer's surplus as regards policyholders,

1 as of the 31st day of the previous December, including those agreements
2 which may require as consideration the transfer of assets from an
3 insurer to a nonaffiliate, if an agreement or understanding exists
4 between the insurer and nonaffiliate that any portion of such assets
5 will be transferred to one or more affiliates of the insurer;

6 (iv) All management agreements, service contracts, and all cost-
7 sharing arrangements; and

8 (v) Any material transactions, specified by regulation, which the
9 commissioner determines may adversely affect the interests of the
10 insurer's policyholders.

11 Nothing contained in this section shall be deemed to authorize or
12 permit any transactions which, in the case of an insurer not a member
13 of the same holding company system, would be otherwise contrary to law.

14 (c) A domestic insurer may not enter into transactions which are
15 part of a plan or series of like transactions with persons within the
16 holding company system if the purpose of those separate transactions is
17 to avoid the statutory threshold amount and thus avoid the review that
18 would occur otherwise. If the commissioner determines that such
19 separate transactions were entered into over any twelve-month period
20 for such purpose, the commissioner may apply for an order as described
21 in section 9(1) of this act.

22 (d) The commissioner, in reviewing transactions pursuant to (b) of
23 this subsection, shall consider whether the transactions comply with
24 the standards set forth in (a) of this subsection and whether they may
25 adversely affect the interests of policyholders.

26 (e) The commissioner shall be notified within thirty days of any
27 investment of the domestic insurer in any one corporation if the total
28 investment in such corporation by the insurance holding company system
29 exceeds ten percent of such corporation's voting securities.

1 (2)(a) No domestic insurer shall pay any extraordinary dividend or
2 make any other extraordinary distribution to its shareholders until:
3 (i) Thirty days after the commissioner has received notice of the
4 declaration thereof and has not within such period disapproved such
5 payment; or (ii) the commissioner shall have approved such payment
6 within such thirty-day period.

7 (b) For purposes of this section, an extraordinary dividend or
8 distribution includes any dividend or distribution of cash or other
9 property, whose fair market value together with that of other dividends
10 or distributions made within the preceding twelve months exceeds the
11 lesser of: (i) Ten percent of such insurer's surplus as regards
12 policyholders as of the 31st day of the previous December; or (ii) the
13 net gain from operations of such insurer, if such insurer is a life
14 insurer or the net income, if such insurer is not a life insurer, not
15 including realized capital gains, for the twelve-month period ending
16 the 31st day of the previous December, but shall not include pro rata
17 distributions of any class of the insurer's own securities. In
18 determining whether a dividend or distribution is extraordinary, an
19 insurer other than a life insurer may carry forward net income from the
20 previous two calendar years that has not already been paid out as
21 dividends. This carry-forward shall be computed by taking the net
22 income from the second and third preceding calendar years, not
23 including realized capital gains, less dividends paid in the second and
24 immediate preceding calendar years.

25 (c) Notwithstanding any other provision of law, an insurer may
26 declare an extraordinary dividend or distribution which is conditional
27 upon the commissioner's approval thereof, and such a declaration shall
28 confer no rights upon shareholders until: (i) The commissioner has
29 approved the payment of such a dividend or distribution; or (ii) the

1 commissioner has not disapproved such payment within the thirty-day
2 period referred to in this subsection (2)(c).

3 (3) For purposes of this chapter, in determining whether an
4 insurer's surplus as regards policyholders is reasonable in relation to
5 the insurer's outstanding liabilities and adequate to its financial
6 needs, the following factors, among others, shall be considered:

7 (a) The size of the insurer as measured by its assets, capital and
8 surplus, reserves, premium writings, insurance in force, and other
9 appropriate criteria;

10 (b) The extent to which the insurer's business is diversified among
11 the several lines of insurance;

12 (c) The number and size of risks insured in each line of business;

13 (d) The extent of the geographical dispersion of the insurer's
14 insured risks;

15 (e) The nature and extent of the insurer's reinsurance program;

16 (f) The quality, diversification, and liquidity of the insurer's
17 investment portfolio;

18 (g) The recent past and projected future trend in the size of the
19 insurer's investment portfolio;

20 (h) The surplus as regards policyholders maintained by other
21 comparable insurers;

22 (i) The adequacy of the insurer's reserves; and

23 (j) The quality and liquidity of investments in affiliates. The
24 commissioner may treat any such investment as a disallowed asset for
25 purposes of determining the adequacy of surplus as regards
26 policyholders whenever in his or her judgment such investment so
27 warrants."

28 "NEW SECTION. Sec. 7. (1) Subject to the limitation contained
29 in this section and in addition to the powers which the commissioner

1 has under chapter 48.03 RCW relating to the examination of insurers,
2 the commissioner shall also have the power to order any insurer
3 registered under section 5 of this act to produce such records, books,
4 or other information papers in the possession of the insurer or its
5 affiliates as are reasonably necessary to ascertain the financial
6 condition of such insurer or to determine compliance with this title.
7 In the event such insurer fails to comply with such order, the
8 commissioner shall have the power to examine such affiliates to obtain
9 such information.

10 (2) The commissioner may retain such attorneys, actuaries,
11 accountants, and other experts not otherwise a part of the
12 commissioner's staff as shall be reasonably necessary to assist in the
13 conduct of the examination under subsection (1) of this section. Any
14 persons so retained shall be under the direction and control of the
15 commissioner and shall act in a purely advisory capacity.

16 (3) Each registered insurer producing for examination records,
17 books, and papers pursuant to subsection (1) of this section shall be
18 liable for and shall pay the expense of such examination in accordance
19 with RCW 48.03.060."

20 "NEW SECTION. **Sec. 8.** The commissioner may, upon notice and
21 opportunity for all interested persons to be heard, issue such rules,
22 regulations, and orders as shall be necessary to carry out the
23 provisions of this chapter."

24 "NEW SECTION. **Sec. 9.** (1) Whenever it appears to the
25 commissioner that any insurer or any director, officer, employee, or
26 agent thereof has committed or is about to commit a violation of this
27 chapter or any rule, regulation, or order issued by the commissioner
28 under this chapter, the commissioner may apply to the superior court

1 for Thurston county or to the court for the county in which the
2 principal office of the insurer is located for an order enjoining such
3 insurer or such director, officer, employee, or agent thereof from
4 violating or continuing to violate this chapter or any such rule,
5 regulation, or order, and for such other equitable relief as the nature
6 of the case and the interest of the insurer's policyholders, creditors,
7 and shareholders or the public may require.

8 (2) No security which is the subject of any agreement or
9 arrangement regarding acquisition, or which is acquired or to be
10 acquired, in contravention of the provisions of this chapter or of any
11 rule, regulation, or order issued by the commissioner under this
12 chapter may be voted at any shareholders' meeting, or may be counted
13 for quorum purposes, and any action of shareholders requiring the
14 affirmative vote of a percentage of shares may be taken as though such
15 securities were not issued and outstanding, but no action taken at any
16 such meeting shall be invalidated by the voting of such securities,
17 unless the action would materially affect control of the insurer or
18 unless the courts of this state have so ordered. If an insurer or the
19 commissioner has reason to believe that any security of the insurer has
20 been or is about to be acquired in contravention of the provisions of
21 this chapter or of any rule, regulation, or order issued by the
22 commissioner under this chapter, the insurer or the commissioner may
23 apply to the superior court for Thurston county or to the court for the
24 county in which the insurer has its principal place of business to
25 enjoin any offer, request, invitation, agreement, or acquisition made
26 in contravention of section 3 of this act or any rule, regulation, or
27 order issued by the commissioner thereunder to enjoin the voting of any
28 security so acquired, to void any vote of such security already cast at
29 any meeting of shareholders, and for such other relief as the nature of

1 the case and the interest of the insurer's policyholders, creditors,
2 and shareholders or the public may require.

3 (3) In any case where a person has acquired or is proposing to
4 acquire any voting securities in violation of this chapter or any rule,
5 regulation, or order issued by the commissioner under this chapter, the
6 superior court for Thurston county or the court for the county in which
7 the insurer has its principal place of business to seize or sequester
8 voting securities may, on such notice as the court deems appropriate,
9 upon the application of the insurer or the commissioner seize or
10 sequester any voting securities of the insurer owned directly or
11 indirectly by such person, and issue such order with respect thereto as
12 may be appropriate to effectuate the provisions of this chapter.

13 Notwithstanding any other provisions of law, for the purposes of
14 this chapter, the situs of the ownership of the securities of domestic
15 insurers shall be deemed to be in this state."

16 "NEW SECTION. Sec. 10. (1) Any insurer failing, without just
17 cause, to file any registration statement as required in this chapter
18 shall be required by the commissioner, after notice and hearing, to pay
19 a penalty of not more than ten thousand dollars per day. The maximum
20 penalty under this section is one million dollars. The commissioner
21 may reduce the penalty if the insurer demonstrates to the commissioner
22 that the imposition of the penalty would constitute a financial
23 hardship to the insurer. Any fine collected under this section shall
24 be paid by the commissioner to the state treasurer for the account of
25 the general fund.

26 (2) Every director or officer of an insurance holding company
27 system who knowingly violates this chapter, or participates in, or
28 assents to, or who knowingly shall permit any of the officers or agents
29 of the insurer to engage in transactions or make investments which have

1 not been properly reported or submitted pursuant to section 5(1) or
2 6(1)(b) or (2) of this act, or which violate this chapter, shall pay,
3 in their individual capacity, a civil forfeiture of not more than ten
4 thousand dollars per violation, after notice and hearing before the
5 commissioner. In determining the amount of the civil forfeiture, the
6 commissioner shall take into account the appropriateness of the
7 forfeiture with respect to the gravity of the violation, the history of
8 previous violations, and such other matters as justice may require.

9 (3) Whenever it appears to the commissioner that any insurer
10 subject to this chapter or any director, officer, employee, or agent
11 thereof has engaged in any transaction or entered into a contract which
12 is subject to section 6 of this act and which would not have been
13 approved had such approval been requested, the commissioner may order
14 the insurer to cease and desist immediately any further activity under
15 that transaction or contract. After notice and hearing the
16 commissioner may also order the insurer to void any such contracts and
17 restore the status quo if such action is in the best interest of the
18 policyholders, creditors, or the public.

19 (4) Whenever it appears to the commissioner that any insurer or any
20 director, officer, employee, or agent thereof has committed a willful
21 violation of this chapter, the commissioner may refer the matter to the
22 prosecuting attorney of Thurston county or the county in which the
23 principal office of the insurer is located. Any insurer that willfully
24 violates this chapter may be fined not more than one million dollars.
25 Any individual who willfully violates this chapter may be fined in his
26 or her individual capacity not more than ten thousand dollars, or be
27 imprisoned for not more than three years, or both.

28 (5) Any officer, director, or employee of an insurance holding
29 company system who willfully and knowingly subscribes to or makes or
30 causes to be made any false statements or false reports or false

1 filings with the intent to deceive the commissioner in the performance
2 of his or her duties under this chapter, upon conviction thereof, shall
3 be imprisoned for not more than three years or fined not more than ten
4 thousand dollars or both. Any fines imposed shall be paid by the
5 officer, director, or employee in his or her individual capacity."

6 "NEW SECTION. Sec. 11. Whenever it appears to the commissioner
7 that any person has committed a violation of this chapter which so
8 impairs the financial condition of a domestic insurer as to threaten
9 insolvency or make the further transaction of business by it hazardous
10 to its policyholders, creditors, shareholders, or the public, then the
11 commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to
12 take possession of the property of such domestic insurer and to conduct
13 the business thereof."

14 "NEW SECTION. Sec. 12. (1) If an order for liquidation or
15 rehabilitation of a domestic insurer has been entered, the receiver
16 appointed under such order shall have a right to recover on behalf of
17 the insurer: (a) From any parent corporation or holding company or
18 person or affiliate who otherwise controlled the insurer, the amount of
19 distributions, other than distributions of shares of the same class of
20 stock, paid by the insurer on its capital stock; or (b) any payment in
21 the form of a bonus, termination settlement, or extraordinary lump sum
22 salary adjustment made by the insurer or its subsidiary to a director,
23 officer, or employee, where the distribution or payment pursuant to (a)
24 or (b) of this subsection is made at any time during the one year
25 preceding the petition for liquidation, conservation, or
26 rehabilitation, as the case may be, subject to the limitations of
27 subsections (2), (3), and (4) of this section.

1 (2) No such distribution shall be recoverable if it is shown that
2 when paid such distribution was lawful and reasonable, and that the
3 insurer did not know and could not reasonably have known that such
4 distribution might adversely affect the ability of the insurer to
5 fulfill its contractual obligations.

6 (3) Any person who was a parent corporation or holding company or
7 a person who otherwise controlled the insurer or affiliate at the time
8 such distributions were paid shall be liable up to the amount of
9 distributions or payments under subsection (1) of this section such
10 person received. Any person who controlled the insurer at the time
11 such distributions were declared shall be liable up to the amount of
12 distributions he or she would have received if they had been paid
13 immediately. If two or more persons are liable with respect to the
14 same distributions, they shall be jointly and severally liable.

15 (4) The maximum amount recoverable under this section shall be the
16 amount needed in excess of all other available assets of the impaired
17 or insolvent insurer to pay the contractual obligations of the impaired
18 or insolvent insurer and to reimburse any guaranty funds.

19 (5) To the extent that any person liable under subsection (3) of
20 this section is insolvent or otherwise fails to pay claims due from it
21 pursuant to such provisions, its parent corporation or holding company
22 or person who otherwise controlled it at the time the distribution was
23 paid, shall be jointly and severally liable for any resulting
24 deficiency in the amount recovered from such parent corporation or
25 holding company or person who otherwise controlled it."

26 "NEW SECTION. Sec. 13. Whenever it appears to the commissioner
27 that any person has committed a violation of this chapter which makes
28 the continued operation of an insurer contrary to the interests of
29 policyholders or the public, the commissioner may, after giving notice

1 and an opportunity to be heard, determine to suspend, revoke, or refuse
2 to renew such insurer's license or authority to do business in this
3 state for such period as he or she finds is required for the protection
4 of policyholders or the public. Any such determination shall be
5 accompanied by specific findings of fact and conclusions of law."

6 "NEW SECTION. Sec. 14. (1) Any person aggrieved by any act,
7 determination, rule, regulation, or order, or any other action of the
8 commissioner pursuant to this chapter may proceed in accordance with
9 the administrative procedure act, chapter 34.05 RCW.

10 (2) Any person aggrieved by any failure of the commissioner to act
11 or make a determination required by this chapter may petition the
12 commissioner under the procedure described in RCW 34.05.330."

13 "NEW SECTION. Sec. 15. This chapter may be known and cited as
14 the business transacted with broker controlled property and casualty
15 insurer act."

16 "NEW SECTION. Sec. 16. Unless the context clearly requires
17 otherwise, the definitions in this section apply throughout this
18 chapter.

19 (1) "Accredited state" means a state in which the insurance
20 department or regulatory agency has qualified as meeting the minimum
21 financial regulatory standards promulgated and established from time to
22 time by the national association of insurance commissioners.

23 (2) "Control" or "controlled by" has the meaning ascribed in
24 section 1(2) of this act.

25 (3) "Controlled insurer" means a licensed insurer which is
26 controlled, directly or indirectly, by a broker.

1 (4) "Controlling producer" means a broker who, directly or
2 indirectly, controls an insurer.

3 (5) "Licensed insurer" or "insurer" means any person, firm,
4 association, or corporation duly licensed to transact property and
5 casualty insurance business in this state. The following, inter alia,
6 are not licensed insurers for purposes of this chapter:

7 (a) All risk retention groups as defined in the superfund
8 amendments reauthorization act of 1986, P.L. 99-499, 100 Stat. 1613
9 (1986), the risk retention act, 15 U.S.C. Sec. 3901 et seq. (1982 &
10 Supp. 1986), and chapter 48.92 RCW;

11 (b) All residual market pools and joint underwriting associations;
12 and

13 (c) All captive insurers. For the purposes of this chapter,
14 captive insurers are insurance companies owned by another organization,
15 whose exclusive purpose is to insure risks of the parent organization
16 and affiliated companies or, in the case of groups and associations,
17 insurance organizations owned by the insureds whose exclusive purpose
18 is to insure risks to member organizations or group members, or both,
19 and their affiliates.

20 (6) "Broker" means an insurance broker or brokers or any other
21 person, firm, association, or corporation, when, for any compensation,
22 commission, or other thing of value, such person, firm, association, or
23 corporation acts or aids in any manner in soliciting, negotiating, or
24 procuring the making of any insurance contract on behalf of an insured
25 other than the person, firm, association, or corporation."

26 "NEW SECTION. Sec. 17. This chapter shall apply to licensed
27 insurers as defined in section 16 of this act, either domiciled in this
28 state or domiciled in a state that is not an accredited state having in
29 effect a substantially similar law. All provisions of the insurance

1 holding company act, chapter 48.31A RCW, or its successor act, to the
2 extent they are not superseded by this chapter, shall continue to
3 apply to all parties within the holding company systems subject to this
4 chapter."

5 "NEW SECTION. Sec. 18. (1)(a) The provisions of this section
6 shall apply if, in any calendar year, the aggregate amount of gross
7 written premium on business placed with a controlled insurer by a
8 controlling broker is equal to or greater than five percent of the
9 admitted assets of the controlled insurer, as reported in the
10 controlled insurer's quarterly statement filed as of September 30 of
11 the prior year.

12 (b) Notwithstanding (a) of this subsection, the provisions of this
13 section shall not apply if:

14 (i) The controlling producer:

15 (A) Places insurance only with the controlled insurer; or only with
16 the controlled insurer and a member or members of the controlled
17 insurer's holding company system, or the controlled insurer's parent,
18 affiliate, or subsidiary and receives no compensation based upon the
19 amount of premiums written in connection with such insurance; and

20 (B) Accepts insurance placements only from nonaffiliated
21 subbrokers, and not directly from insureds; and

22 (ii) The controlled insurer, except for business written through a
23 residual market facility such as the assigned risk plan, fair plans, or
24 other such plans, accepts insurance business only from a controlling
25 broker, a broker controlled by the controlled insurer, or a broker that
26 is a subsidiary of the controlled insurer.

27 (2) A controlled insurer shall not accept business from a
28 controlling broker and a controlling broker shall not place business
29 with a controlled insurer unless there is a written contract between

1 the controlling broker and the insurer specifying the responsibilities
2 of each party, which contract has been approved by the board of
3 directors of the insurer and contains the following minimum provisions:

4 (a) The controlled insurer may terminate the contract for cause,
5 upon written notice to the controlling broker. The controlled insurer
6 shall suspend the authority of the controlling broker to write business
7 during the pendency of any dispute regarding the cause for the
8 termination;

9 (b) The controlling broker shall render accounts to the controlling
10 insurer detailing all material transactions, including information
11 necessary to support all commissions, charges, and other fees received
12 by, or owing to, the controlling broker;

13 (c) The controlling broker shall remit all funds due under the
14 terms of the contract to the controlling insurer on at least a monthly
15 basis. The due date shall be fixed so that premiums or installments
16 thereof collected shall be remitted no later than ninety days after the
17 effective date of any policy placed with the controlling insurer under
18 this contract;

19 (d) All funds collected for the controlled insurer's account shall
20 be held by the controlling broker in a fiduciary capacity, in one or
21 more appropriately identified bank accounts in banks that are members
22 of the federal reserve system, in accordance with the applicable
23 provisions of this title. However, funds of a controlling broker not
24 required to be licensed in this state shall be maintained in compliance
25 with the requirements of the controlling broker's domiciliary
26 jurisdiction;

27 (e) The controlling broker shall maintain separately identifiable
28 records of business written for the controlled insurer;

29 (f) The contract shall not be assigned in whole or in part by the
30 controlling broker;

1 (g) The controlled insurer shall provide the controlling broker
2 with its underwriting standards, rules, and procedures, manuals setting
3 forth the rates to be charged, and the conditions for the acceptance or
4 rejection of risks. The controlling producer shall adhere to such
5 standards, rules, procedures, rates, and conditions, which shall be the
6 same as those applicable to comparable business placed with the
7 controlled insurer by a broker other than the controlling broker;

8 (h) The rates of the controlling broker's commissions, charges, and
9 other fees shall be no greater than those applicable to comparable
10 business placed with the controlled insurer by brokers other than
11 controlling brokers. For purposes of (g) and (h) of this subsection,
12 examples of comparable business include the same lines of insurance,
13 same kinds of insurance, same kinds of risks, similar policy limits,
14 and similar quality of business;

15 (i) If the contract provides that the controlling broker, on
16 insurance business placed with the insurer, is to be compensated
17 contingent upon the insurer's profits on that business, then such
18 compensation shall not be determined and paid until at least five years
19 after the premiums on liability insurance are earned and at least one
20 year after the premiums are earned on any other insurance. In no event
21 shall the commissions be paid until the adequacy of the controlled
22 insurer's reserves on remaining claims has been independently verified
23 pursuant to subsection (3) of this section;

24 (j) The insurer may establish a different limit on the controlling
25 broker's writings in relation to the controlled insurer's surplus and
26 total writings for each line or subline of business. The controlled
27 insurer shall notify the controlling broker when the applicable limit
28 is approached and shall not accept business from the controlling broker
29 if the limit is reached. The controlling broker shall not place

1 business with the controlled insurer if it has been notified by the
2 controlled insurer that the limit has been reached; and

3 (k) The controlling broker may negotiate but shall not bind
4 reinsurance on behalf of the controlled insurer on business the
5 controlling broker places with the controlled insurer, except that the
6 controlling broker may bind facultative reinsurance contracts pursuant
7 to obligatory facultative agreements if the contract with the
8 controlled insurer contains underwriting guidelines including, for both
9 reinsurance assumed and ceded, a list of reinsurers with which such
10 automatic agreements are in effect, the coverages and amounts of
11 percentages that may be reinsured, and commission schedules.

12 (3) Every controlled insurer shall have an audit committee of the
13 board of directors composed of independent directors. The audit
14 committee shall annually meet with management, the insurer's
15 independent certified public accountants, and an independent casualty
16 actuary or other independent loss reserve specialist acceptable to the
17 commissioner to review the adequacy of the insurer's loss reserves.

18 (4)(a) In addition to any other required loss reserve
19 certification, the controlled insurer shall, annually, on April 1 of
20 each year, file with the commissioner an opinion of an independent
21 casualty actuary, or such other independent loss reserve specialist
22 acceptable to the commissioner, reporting loss ratios for each line of
23 business written and attesting to the adequacy of loss reserves
24 established for losses incurred and outstanding as of year-end,
25 including losses incurred but not reported, on business placed by the
26 broker; and

27 (b) The controlled insurer shall annually report to the
28 commissioner the amount of commissions paid to the producer, the
29 percentage such amount represents of the net premiums written and

1 comparable amounts and percentages paid to noncontrolling brokers for
2 placements of the same kinds of insurance."

3 "NEW SECTION. **Sec. 19.** The broker, prior to the effective date
4 of the policy, shall deliver written notice to the prospective insured
5 disclosing the relationship between the broker and the controlled
6 insurer, except that, if the business is placed through a subbroker who
7 is not a controlling broker, the controlling broker shall retain in his
8 or her records a signed commitment from the subbroker that the
9 subbroker is aware of the relationship between the insurer and the
10 broker and that the subbroker has or will notify the insured."

11 "NEW SECTION. **Sec. 20.** (1)(a) If the commissioner believes that
12 the controlling broker or any other person has not materially complied
13 with this chapter, or any regulation or order promulgated under this
14 chapter, after notice and opportunity to be heard, the commissioner may
15 order the controlling broker to cease placing business with the
16 controlled insurer; and

17 (b) If it was found that because of such material noncompliance
18 that the controlled insurer or any policyholder thereof has suffered
19 any loss or damage, the commissioner may maintain a civil action or
20 intervene in an action brought by or on behalf of the insurer or
21 policyholder for recovery of compensatory damages for the benefit of
22 the insurer or policyholder or other appropriate relief.

23 (2) If an order for liquidation or rehabilitation of the controlled
24 insurer has been entered pursuant to chapter 48.32 RCW, and the
25 receiver appointed under that order believes that the controlling
26 broker or any other person has not materially complied with this
27 chapter, or any regulation or order promulgated under this chapter, and
28 the insurer suffered any loss or damage therefrom, the receiver may

1 maintain a civil action for recovery of damages or other appropriate
2 sanctions for the benefit of the insurer.

3 (3) Nothing contained in this section shall affect the right of the
4 commissioner to impose any other penalties provided for in this title.

5 (4) Nothing contained in this section is intended to or shall in
6 any manner alter or affect the rights of policyholders, claimants,
7 creditors, or other third parties."

8 "NEW SECTION. Sec. 21. This chapter may be cited as the
9 reinsurance intermediary act."

10 "NEW SECTION. Sec. 22. As used in this chapter:

11 (1) "Actuary" means a person who is a member in good standing of
12 the american academy of actuaries.

13 (2) "Controlling person" means any person, firm, association, or
14 corporation who directly or indirectly has the power to direct or cause
15 to be directed, the management, control, or activities of the
16 reinsurance intermediary.

17 (3) "Insurer" means insurer as defined in RCW 48.01.050.

18 (4) "Licensed producer" means an agent, broker, or reinsurance
19 intermediary licensed pursuant to the applicable provisions of this
20 title.

21 (5) "Reinsurance intermediary" means a reinsurance intermediary-
22 broker or a reinsurance intermediary-manager as these terms are defined
23 in subsections (6) and (7) of this section.

24 (6) "Reinsurance intermediary-broker" means any person, other than
25 an officer or employee of the ceding insurer, firm, association, or
26 corporation who solicits, negotiates, or places reinsurance cessions or
27 retrocessions on behalf of a ceding insurer without the authority or
28 power to bind reinsurance on behalf of such insurer.

1 (7) "Reinsurance intermediary-manager" means any person, firm,
2 association, or corporation who has authority to bind or manages all or
3 part of the assumed reinsurance business of a reinsurer, including the
4 management of a separate division, department, or underwriting office,
5 and acts as an agent for such reinsurer whether known as a reinsurance
6 intermediary-manager, manager, or other similar term. Notwithstanding
7 this subsection, the following persons shall not be considered a
8 reinsurance intermediary-manager, with respect to such reinsurer, for
9 the purposes of this chapter:

10 (a) An employee of the reinsurer;

11 (b) A United States manager of the United States branch of an alien
12 reinsurer;

13 (c) An underwriting manager which, pursuant to contract, manages
14 all the reinsurance operations of the reinsurer, is under common
15 control with the reinsurer, subject to the holding company act, chapter
16 48.-- RCW (sections 1 through 14 of this act), and whose compensation
17 is not based on the volume of premiums written;

18 (d) The manager of a group, association, pool, or organization of
19 insurers which engage in joint underwriting or joint reinsurance and
20 who are subject to examination by the insurance commissioner of the
21 state in which the manager's principal business office is located.

22 (8) "Reinsurer" means any person, firm, association, or corporation
23 duly licensed in this state pursuant to the applicable provisions of
24 this title as an insurer with the authority to assume reinsurance.

25 (9) "To be in violation" means that the reinsurance intermediary,
26 insurer, or reinsurer for whom the reinsurance intermediary was acting
27 failed to substantially comply with the provisions of this chapter.

28 (10) "Qualified United States financial institution" means an
29 institution that:

1 (a) Is organized or, in the case of a United States office of a
2 foreign banking organization, licensed, under the laws of the United
3 States or any state thereof;

4 (b) Is regulated, supervised, and examined by United States federal
5 or state authorities having regulatory authority over banks and trust
6 companies; and

7 (c) Has been determined by either the commissioner, or the
8 securities valuation office of the national association of insurance
9 commissioners, to meet such standards of financial condition and
10 standing as are considered necessary and appropriate to regulate the
11 quality of financial institutions whose letters of credit will be
12 acceptable to the commissioner."

13 "NEW SECTION. Sec. 23. (1) No person, firm, association, or
14 corporation shall act as a reinsurance intermediary-broker in this
15 state if the person, firm, association, or corporation maintains an
16 office either directly or as a member or employee of a firm or
17 association, or an officer, director, or employee of a corporation:

18 (a) In this state, unless such person, firm, association, or
19 corporation is a licensed reinsurance intermediary-broker in this
20 state; or

21 (b) In another state, unless such person, firm, association, or
22 corporation is a licensed reinsurance intermediary-broker in this state
23 or another state having a law substantially similar to this chapter.

24 (2) No person, firm, association, or corporation shall act as a
25 reinsurance intermediary-manager:

26 (a) For a reinsurer domiciled in this state, unless such person,
27 firm, association, or corporation is a licensed reinsurance
28 intermediary-manager in this state;

1 (b) In this state, if the person, firm, association, or corporation
2 maintains an office either directly or as a member or employee of a
3 firm or association, or an officer, director, or employee of a
4 corporation in this state, unless such person, firm, association, or
5 corporation is a licensed reinsurance intermediary-manager in this
6 state;

7 (c) In another state for a nondomestic insurer, unless such person,
8 firm, association, or corporation is a licensed reinsurance
9 intermediary-manager in this state or another state having a law
10 substantially similar to this law.

11 (3) The commissioner may require a reinsurance intermediary-manager
12 subject to subsection (2) of this section to:

13 (a) File a bond in an amount from an insurer acceptable to the
14 commissioner for the protection of the reinsurer; and

15 (b) Maintain an errors and omissions policy in an amount acceptable
16 to the commissioner.

17 (4)(a) The commissioner may issue a reinsurance intermediary
18 license to any person, firm, association, or corporation who has
19 complied with the requirements of this chapter. Any such license
20 issued to a firm or association will authorize all the members of such
21 firm or association and any designated employees to act as reinsurance
22 intermediaries under the license, and all such persons shall be named
23 in the application and any supplements thereto. Any such license
24 issued to a corporation shall authorize all of the officers, and any
25 designated employees and directors thereof to act as reinsurance
26 intermediaries on behalf of such corporation, and all such persons
27 shall be named in the application and any supplements thereto.

28 (b) If the applicant for a reinsurance intermediary license is a
29 nonresident, such applicant, as a condition precedent to receiving or
30 holding a license, shall designate the commissioner as agent for

1 service of process in the manner, and with the same legal effect,
2 provided for by this chapter for designation of service of process upon
3 unauthorized insurers, and also shall furnish the commissioner with the
4 name and address of a resident of this state upon whom notices or
5 orders of the commissioner or process affecting such nonresident
6 reinsurance intermediary may be served. Such licensee shall promptly
7 notify the commissioner in writing of every change in its designated
8 agent for service of process, and such change shall not become
9 effective until acknowledged by the commissioner.

10 (5) The commissioner may refuse to issue a reinsurance intermediary
11 license if, in his or her judgment, the applicant, any one named on the
12 application, or any member, principal, officer, or director of the
13 applicant, is not trustworthy, or that any controlling person of such
14 applicant is not trustworthy to act as a reinsurance intermediary, or
15 that any of the foregoing has given cause for revocation or suspension
16 of such license, or has failed to comply with any prerequisite for the
17 issuance of such license. Upon written request therefor, the
18 commissioner will furnish a summary of the basis for refusal to issue
19 a license, which document shall be privileged and not subject to
20 chapter 42.17 RCW.

21 (6) Licensed attorneys at law of this state when acting in their
22 professional capacity as such shall be exempt from this section."

23 "NEW SECTION. Sec. 24. Brokers transactions between a
24 reinsurance intermediary-broker and the insurer it represents in such
25 capacity shall only be entered into pursuant to a written
26 authorization, specifying the responsibilities of each party. The
27 authorization shall, at a minimum, provide that:

28 (1) The insurer may terminate the reinsurance intermediary-broker's
29 authority at any time.

1 (2) The reinsurance intermediary-broker will render accounts to the
2 insurer accurately detailing all material transactions, including
3 information necessary to support all commissions, charges, and other
4 fees received by, or owing, to the reinsurance intermediary-broker, and
5 remit all funds due to the insurer within thirty days of receipt.

6 (3) All funds collected for the insurer's account will be held by
7 the reinsurance intermediary-broker in a fiduciary capacity in a bank
8 which is a qualified United States financial institution as defined in
9 this chapter.

10 (4) The reinsurance intermediary-broker will comply with section 25
11 of this act.

12 (5) The reinsurance intermediary-broker will comply with the
13 written standards established by the insurer for the cession or
14 retrocession of all risks.

15 (6) The reinsurance intermediary-broker will disclose to the
16 insurer any relationship with any reinsurer to which business will be
17 ceded or retroceded."

18 "NEW SECTION. Sec. 25. (1) For at least ten years after
19 expiration of each contract of reinsurance transacted by the
20 reinsurance intermediary-broker, the reinsurance intermediary-broker
21 will keep a complete record for each transaction showing:

22 (a) The type of contract, limits, underwriting restrictions,
23 classes, or risks and territory;

24 (b) Period of coverage, including effective and expiration dates,
25 cancellation provisions, and notice required of cancellation;

26 (c) Reporting and settlement requirements of balances;

27 (d) Rate used to compute the reinsurance premium;

28 (e) Names and addresses of assuming reinsurers;

1 (f) Rates of all reinsurance commissions, including the commissions
2 on any retrocessions handled by the reinsurance intermediary-broker;

3 (g) Related correspondence and memoranda;

4 (h) Proof of placement;

5 (i) Details regarding retrocessions handled by the reinsurance
6 intermediary-broker including the identity of retrocessionaires and
7 percentage of each contract assumed or ceded;

8 (j) Financial records, including but not limited to, premium and
9 loss accounts; and

10 (k) When the reinsurance intermediary-broker procures a reinsurance
11 contract on behalf of a licensed ceding insurer:

12 (i) Directly from any assuming reinsurer, written evidence that the
13 assuming reinsurer has agreed to assume the risk; or

14 (ii) If placed through a representative of the assuming reinsurer,
15 other than an employee, written evidence that such reinsurer has
16 delegated binding authority to the representative.

17 (2) The insurer will have access and the right to copy and audit
18 all accounts and records maintained by the reinsurance intermediary-
19 broker related to its business in a form usable by the insurer."

20 "NEW SECTION. Sec. 26. (1) An insurer shall not engage the
21 services of any person, firm, association, or corporation to act as a
22 reinsurance intermediary-broker on its behalf unless such person is
23 licensed as required by section 23(1) of this act.

24 (2) An insurer may not employ an individual who is employed by a
25 reinsurance intermediary-broker with which it transacts business,
26 unless such reinsurance intermediary-broker is under common control
27 with the insurer and subject to the holding company act, chapter 48.--
28 RCW (sections 1 through 14 of this act).

1 (3) The insurer shall annually obtain a copy of statements of the
2 financial condition of each reinsurance intermediary-broker with which
3 it transacts business."

4 "NEW SECTION. Sec. 27. Transactions between a reinsurance
5 intermediary-manager and the reinsurer it represents in such capacity
6 shall only be entered into pursuant to a written contract, specifying
7 the responsibilities of each party, which shall be approved by the
8 reinsurer's board of directors. At least thirty days before such
9 reinsurer assumes or cedes business through such reinsurance
10 intermediary-manager, a true copy of the approved contract shall be
11 filed with the commissioner for approval. The contract shall, at a
12 minimum, provide that:

13 (1) The reinsurer may terminate the contract for cause upon written
14 notice to the reinsurance intermediary-manager. The reinsurer may
15 immediately suspend the authority of the reinsurance intermediary-
16 manager to assume or cede business during the pendency of any dispute
17 regarding the cause for termination.

18 (2) The reinsurance intermediary-manager will render accounts to
19 the reinsurer accurately detailing all material transactions, including
20 information necessary to support all commissions, charges, and other
21 fees received by, or owing to, the reinsurance intermediary-manager,
22 and remit all funds due under the contract to the reinsurer on not less
23 than a monthly basis.

24 (3) All funds collected for the reinsurer's account will be held by
25 the reinsurance intermediary-manager in a fiduciary capacity in a bank
26 which is a qualified United States financial institution as defined in
27 this chapter. The reinsurance intermediary-manager may retain no more
28 than three months' estimated claims payments and allocated loss

1 adjustment expenses. The reinsurance intermediary-manager shall
2 maintain a separate bank account for each reinsurer that it represents.

3 (4) For at least ten years after expiration of each contract of
4 reinsurance transacted by the reinsurance intermediary-manager, the
5 reinsurance intermediary-manager will keep a complete record for each
6 transaction showing:

7 (a) The type of contract, limits, underwriting restrictions,
8 classes, or risks and territory;

9 (b) Period of coverage, including effective and expiration dates,
10 cancellation provisions, and notice required of cancellation, and
11 disposition of outstanding reserves on covered risks;

12 (c) Reporting and settlement requirements of balances;

13 (d) Rate used to compute the reinsurance premium;

14 (e) Names and addresses of reinsurers;

15 (f) Rates of all reinsurance commissions, including the commissions
16 on any retrocessions handled by the reinsurance intermediary-manager;

17 (g) Related correspondence and memoranda;

18 (h) Proof of placement;

19 (i) Details regarding retrocessions handled by the reinsurance
20 intermediary-manager, as permitted by section 29(4) of this act,
21 including the identity of retrocessionaires and percentage of each
22 contract assumed or ceded;

23 (j) Financial records, including but not limited to, premium and
24 loss accounts; and

25 (k) When the reinsurance intermediary-manager places a reinsurance
26 contract on behalf of a ceding insurer:

27 (i) Directly from any assuming reinsurer, written evidence that the
28 assuming reinsurer has agreed to assume the risk; or

1 (ii) If placed through a representative of the assuming reinsurer,
2 other than an employee, written evidence that such reinsurer has
3 delegated binding authority to the representative.

4 (5) The reinsurer will have access and the right to copy all
5 accounts and records maintained by the reinsurance intermediary-manager
6 related to its business in a form usable by the reinsurer.

7 (6) The contract cannot be assigned in whole or in part by the
8 reinsurance intermediary-manager.

9 (7) The reinsurance intermediary-manager will comply with the
10 written underwriting and rating standards established by the insurer
11 for the acceptance, rejection, or cession of all risks.

12 (8) Sets forth the rates, terms, and purposes of commissions,
13 charges, and other fees which the reinsurance intermediary-manager may
14 levy against the reinsurer.

15 (9) If the contract permits the reinsurance intermediary-manager to
16 settle claims on behalf of the reinsurer:

17 (a) All claims will be reported to the reinsurer in a timely
18 manner;

19 (b) A copy of the claim file will be sent to the reinsurer at its
20 request or as soon as it becomes known that the claim:

21 (i) Has the potential to exceed the lesser of an amount determined
22 by the commissioner or the limit set by the reinsurer;

23 (ii) Involves a coverage dispute;

24 (iii) May exceed the reinsurance intermediary-manager's claims
25 settlement authority;

26 (iv) Is open for more than six months; or

27 (v) Is closed by payment of the lesser of an amount set by the
28 commissioner or an amount set by the reinsurer;

29 (c) All claim files will be the joint property of the reinsurer and
30 reinsurance intermediary-manager. However, upon an order of

1 liquidation of the reinsurer such files shall become the sole property
2 of the reinsurer or its estate; the reinsurance intermediary-manager
3 shall have reasonable access to and the right to copy the files on a
4 timely basis;

5 (d) Any settlement authority granted to the reinsurance
6 intermediary-manager may be terminated for cause upon the reinsurer's
7 written notice to the reinsurance intermediary-manager or upon the
8 termination of the contract. The reinsurer may suspend the settlement
9 authority during the pendency of the dispute regarding the cause of
10 termination.

11 (10) If the contract provides for a sharing of interim profits by
12 the reinsurance intermediary-manager, that such interim profits will
13 not be paid until one year after the end of each underwriting period
14 for property business and five years after the end of each underwriting
15 period for casualty business, or a later period set by the commissioner
16 for specified lines of insurance, and not until the adequacy of
17 reserves on remaining claims has been verified pursuant to section
18 29(3) of this act.

19 (11) The reinsurance intermediary-manager will annually provide the
20 reinsurer with a statement of its financial condition prepared by an
21 independent certified accountant.

22 (12) The reinsurer shall periodically, at least semiannually,
23 conduct an on-site review of the underwriting and claims processing
24 operations of the reinsurance intermediary-manager.

25 (13) The reinsurance intermediary-manager will disclose to the
26 reinsurer any relationship it has with any insurer prior to ceding or
27 assuming any business with such insurer pursuant to this contract.

28 (14) Within the scope of its actual or apparent authority the acts
29 of the reinsurance intermediary-manager shall be deemed to be the acts
30 of the reinsurer on whose behalf it is acting."

1 "NEW SECTION. **Sec. 28.** The reinsurance intermediary-manager
2 shall not:

3 (1) Cede retrocessions on behalf of the reinsurer, except that the
4 reinsurance intermediary-manager may cede facultative retrocessions
5 pursuant to obligatory facultative agreements if the contract with the
6 reinsurer contains reinsurance underwriting guidelines for such
7 retrocessions. Such guidelines shall include a list of reinsurers with
8 which such automatic agreements are in effect, and for each such
9 reinsurer, the coverages and amounts or percentages that may be
10 reinsured, and commission schedules.

11 (2) Commit the reinsurer to participate in reinsurance syndicates.

12 (3) Appoint any reinsurance intermediary without assuring that the
13 reinsurance intermediary is lawfully licensed to transact the type of
14 reinsurance for which he or she is appointed.

15 (4) Without prior approval of the reinsurer, pay or commit the
16 reinsurer to pay a claim, net of retrocessions, that exceeds the lesser
17 of an amount specified by the reinsurer or one percent of the
18 reinsurer's policyholder's surplus as of December 31 of the last
19 complete calendar year.

20 (5) Collect any payment from a retrocessionaire or commit the
21 reinsurer to any claim settlement with a retrocessionaire, without
22 prior approval of the reinsurer. If prior approval is given, a report
23 must be promptly forwarded to the reinsurer.

24 (6) Jointly employ an individual who is employed by the reinsurer
25 unless such reinsurance intermediary-manager is under common control
26 with the reinsurer subject to the holding company act, chapter 48.--
27 RCW (sections 1 through 14 of this act).

28 (7) Appoint a subreinsurance intermediary-manager."

1 "NEW SECTION. Sec. 29. (1) A reinsurer shall not engage the
2 services of any person, firm, association, or corporation to act as a
3 reinsurance intermediary-manager on its behalf unless such person is
4 licensed as required by section 23(2) of this act.

5 (2) The reinsurer shall annually obtain a copy of statements of the
6 financial condition of each reinsurance intermediary-manager which such
7 reinsurer has engaged prepared by an independent certified accountant
8 in a form acceptable to the commissioner.

9 (3) If a reinsurance intermediary-manager establishes loss
10 reserves, the reinsurer shall annually obtain the opinion of an actuary
11 attesting to the adequacy of loss reserves established for losses
12 incurred and outstanding on business produced by the reinsurance
13 intermediary-manager. This opinion shall be in addition to any other
14 required loss reserve certification.

15 (4) Binding authority for all retrocessional contracts or
16 participation in reinsurance syndicates shall rest with an officer of
17 the reinsurer who shall not be affiliated with the reinsurance
18 intermediary-manager.

19 (5) Within thirty days of termination of a contract with a
20 reinsurance intermediary-manager, the reinsurer shall provide written
21 notification of such termination to the commissioner.

22 (6) A reinsurer shall not appoint to its board of directors, any
23 officer, director, employee, controlling shareholder, or subproducer of
24 its reinsurance intermediary-manager. This subsection shall not apply
25 to relationships governed by the holding company act, chapter 48.-- RCW
26 (sections 1 through 14 of this act), or, if applicable, the broker
27 controlled property and casualty insurer act, chapter 48.-- RCW
28 (sections 15 through 20 of this act)."

1 "NEW SECTION. **Sec. 30.** (1) A reinsurance intermediary shall be
2 subject to examination by the commissioner. The commissioner shall
3 have access to all books, bank accounts, and records of the reinsurance
4 intermediary in a form usable to the commissioner.

5 (2) A reinsurance intermediary-manager may be examined as if it
6 were the reinsurer."

7 "NEW SECTION. **Sec. 31.** (1) A reinsurance intermediary, insurer,
8 or reinsurer found by the commissioner, after a hearing conducted in
9 accordance with chapters 48.17 and 34.05 RCW, to be in violation of any
10 provision of this chapter, shall:

11 (a) For each separate violation, pay a penalty in an amount not
12 exceeding five thousand dollars;

13 (b) Be subject to revocation or suspension of its license; and

14 (c) If a violation was committed by the reinsurance intermediary,
15 such reinsurance intermediary shall make restitution to the insurer,
16 reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for
17 the net losses incurred by the insurer or reinsurer attributable to
18 such violation.

19 (2) The decision, determination, or order of the commissioner
20 pursuant to subsection (1) of this section shall be subject to judicial
21 review pursuant to this title and chapter 34.05 RCW.

22 (3) Nothing contained in this section shall affect the right of the
23 commissioner to impose any other penalties provided in this title.

24 (4) Nothing contained in this chapter is intended to or shall in
25 any manner limit or restrict the rights of policyholders, claimants,
26 creditors, or other third parties or confer any rights to such
27 persons."

1 "NEW SECTION. **Sec. 32.** The commissioner may adopt reasonable
2 rules for the implementation and administration of the provisions of
3 this chapter."

4 "NEW SECTION. **Sec. 33.** This chapter may be known and cited as
5 the managing general agents act."

6 "NEW SECTION. **Sec. 34.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter:

9 (1) "Actuary" means a person who is a member in good standing of
10 the American academy of actuaries.

11 (2) "Insurer" means any person having a certificate of authority in
12 this state as an insurance company pursuant to RCW 48.01.050.

13 (3) "Managing general agent" means:

14 (a) A person who manages all or part of the insurance business of
15 an insurer, including the management of a separate division,
16 department, or underwriting office, and acts as a representative of
17 such insurer whether known as a managing general agent, manager, or
18 other similar term, and who, with or without the authority, either
19 separately or together with affiliates, produces, directly or
20 indirectly, and underwrites an amount of gross direct written premium
21 equal to or more than five percent of the policyholder surplus as
22 reported in the last annual statement of the insurer in any one quarter
23 or year together with one or more of the following activities related
24 to the business produced:

25 (i) Adjusts or pays claims in excess of an amount to be determined
26 by the commissioner; or

27 (ii) Negotiates reinsurance on behalf of the insurer.

1 (b) Notwithstanding (a) of this subsection, the following persons
2 shall not be managing general agents for purposes of this chapter:

3 (i) An employee of the insurer;

4 (ii) A United States manager of the United States branch of an
5 alien insurer;

6 (iii) An underwriting manager who, pursuant to contract, manages
7 all of the insurance operations of the insurer, is under common control
8 with the insurer, subject to chapter 48.31A RCW, and whose compensation
9 is not based on the volume of premiums written; or

10 (iv) The attorney-in-fact authorized by and acting for the
11 subscribers of a reciprocal insurer or interinsurance exchange under
12 powers of attorney.

13 (4) "Underwrite" means the authority to accept or reject risk on
14 behalf of the insurer."

15 "NEW SECTION. Sec. 35. (1) No person may act in the capacity of
16 a managing general agent with respect to risks located in this state,
17 for an insurer authorized by this state, unless that person is licensed
18 in this state as an agent, under chapter 48.17 RCW, for the lines of
19 insurance involved and is designated as a managing general agent and
20 appointed as such by the insurer.

21 (2) No person may act in the capacity of a managing general agent
22 representing an insurer domiciled in this state with respect to risks
23 located outside this state unless that person is licensed as an agent
24 in this state, under chapter 48.17 RCW, for the lines of insurance
25 involved and is designated as a managing general agent and appointed as
26 such by the insurer.

27 (3) The commissioner may require a bond for the protection of each
28 insurer.

1 (4) The commissioner may require the managing general agent to
2 maintain an errors and omissions policy."

3 "NEW SECTION. Sec. 36. No managing general agent may place
4 business with an insurer unless there is in force a written contract
5 between the managing general agent and the insurer that sets forth the
6 responsibilities of each party and, where both parties share
7 responsibility for a particular function, specifies the division of
8 such responsibilities, and that contains the following minimum
9 provisions:

10 (1) The insurer may terminate the contract for cause upon written
11 notice to the managing general agent. The insurer may suspend the
12 underwriting authority of the managing general agent during the
13 pendency of any dispute regarding the cause for termination.

14 (2) The managing general agent shall render accounts to the insurer
15 detailing all transactions and remit all funds due under the contract
16 to the insurer on not less than a monthly basis.

17 (3) All funds collected for the account of an insurer shall be held
18 by the managing general agent in a fiduciary capacity in a financial
19 institution located in this state which is a member of the federal
20 reserve system. This account shall be used for all payments on behalf
21 of the insurer. The managing general agent may retain no more than
22 three months estimated claims payments and allocated loss adjustment
23 expenses.

24 (4) Separate records of business written by the managing general
25 agent shall be maintained. The insurer shall have access to and the
26 right to copy all accounts and records related to its business in a
27 form usable by the insurer and the commissioner shall have access to
28 all books, bank accounts, and records of the managing general agent in

1 a form usable to the commissioner. Those records shall be retained
2 according to the requirements of this title and regulations thereunder.

3 (5) The contract may not be assigned in whole or part by the
4 managing general agent.

5 (6)(a) Appropriate underwriting guidelines shall include at least
6 the following: The maximum annual premium volume; the basis of the
7 rates to be charged; the types of risks that may be written; maximum
8 limits of liability; applicable exclusions; territorial limitations;
9 policy cancellation provisions; and the maximum policy period.

10 (b) The insurer shall have the right to cancel or not renew any
11 policy of insurance subject to the applicable laws and regulations,
12 including those in chapter 48.18 RCW.

13 (7) If the contract permits the managing general agent to settle
14 claims on behalf of the insurer:

15 (a) All claims shall be reported to the insurer in a timely manner.

16 (b) A copy of the claim file shall be sent to the insurer at its
17 request or as soon as it becomes known that the claim:

18 (i) Has the potential to exceed an amount determined by the
19 commissioner, or exceeds the limit set by the insurer, whichever is
20 less;

21 (ii) Involves a coverage dispute;

22 (iii) May exceed the managing general agent's claims settlement
23 authority;

24 (iv) Is open for more than six months; or

25 (v) Is closed by payment in excess of an amount set by the
26 commissioner or an amount set by the insurer, whichever is less.

27 (c) All claim files shall be the joint property of the insurer and
28 the managing general agent. However, upon an order of liquidation of
29 the insurer, those files shall become the sole property of the insurer

1 or its liquidator or successor. The managing general agent shall have
2 reasonable access to and the right to copy the files on a timely basis.

3 (d) Any settlement authority granted to the managing general agent
4 may be terminated for cause upon the insurer's written notice to the
5 managing general agent or upon the termination of the contract. The
6 insurer may suspend the managing general agent's settlement authority
7 during the pendency of any dispute regarding the cause for termination.

8 (8) Where electronic claims files are in existence, the contract
9 must address the timely transmission of the data.

10 (9) If the contract provides for a sharing of interim profits by
11 the managing general agent, and the managing general agent has the
12 authority to determine the amount of the interim profits by
13 establishing loss reserves or controlling claim payments or in any
14 other manner, interim profits shall not be paid to the managing general
15 agent until one year after they are earned for property insurance
16 business and five years after they are earned on casualty business and
17 not until the profits have been verified under section 37 of this act.

18 (10) The managing general agent may not:

19 (a) Bind reinsurance or retrocessions on behalf of the insurer,
20 except that the managing general agent may bind facultative reinsurance
21 contracts pursuant to obligatory facultative agreements if the contract
22 with the insurer contains reinsurance underwriting guidelines
23 including, for both reinsurance assumed and ceded, a list of reinsurers
24 with which such automatic agreements are in effect, the coverages and
25 amounts or percentages that may be reinsured, and commission schedules;

26 (b) Commit the insurer to participate in insurance or reinsurance
27 syndicates;

28 (c) Use any agent that is not appointed to represent the insurer in
29 accordance with the requirements of chapter 48.17 RCW;

1 (d) Without prior approval of the insurer, pay or commit the
2 insurer to pay a claim over a specified amount, net of reinsurance,
3 that shall not exceed one percent of the insurer's policyholder surplus
4 as of December 31 of the last-completed calendar year;

5 (e) Collect any payment from a reinsurer or commit the insurer to
6 any claim settlement with a reinsurer, without prior approval of the
7 insurer. If prior approval is given, a report shall be promptly
8 forwarded to the insurer;

9 (f) Permit any agent appointed by it to serve on the insurer's
10 board of directors;

11 (g) Jointly employ an individual who is employed by the insurer; or

12 (h) Appoint a submanaging general agent."

13 "NEW SECTION. Sec. 37. (1) The insurer shall have on file an
14 independent audited financial statement, in a form acceptable to the
15 commissioner, of each managing general agent with which it is doing or
16 has done business.

17 (2) If a managing general agent establishes loss reserves, the
18 insurer shall annually obtain the opinion of an actuary attesting to
19 the adequacy of loss reserves established for losses incurred and
20 outstanding on business produced by the managing general agent. This
21 is in addition to any other required loss reserve certification.

22 (3) The insurer shall periodically, and no less frequently than
23 semiannually, conduct an on-site review of the underwriting and claims
24 processing operations of the managing general agent.

25 (4) Binding authority for all reinsurance contracts or
26 participation in insurance or reinsurance syndicates shall rest with an
27 officer of the insurer, who shall not be affiliated with the managing
28 general agent.

1 (5) Within thirty days of entering into or terminating a contract
2 with a managing general agent, the insurer shall provide written
3 notification of that appointment or termination to the commissioner.
4 Notices of appointment of a managing general agent shall include a
5 statement of duties which the managing general agent is expected to
6 perform on behalf of the insurer, the lines of insurance for which the
7 managing general agent is to be authorized to act, and any other
8 information the commissioner may request.

9 (6) An insurer shall review its books and records each calendar
10 quarter to determine if any agent has become, by operation of section
11 34(3) of this act, a managing general agent as defined in section 34 of
12 this act. If the insurer determines that an agent has become a
13 managing general agent under section 34 of this act, the insurer shall
14 promptly notify the agent and the commissioner of that determination
15 and the insurer and agent shall fully comply with the provisions of
16 this chapter within thirty days.

17 (7) An insurer may not appoint to its board of directors an
18 officer, director, employee, subagent, or controlling shareholder of
19 its managing general agents. This subsection shall not apply to
20 relationships governed by chapter 48.31A RCW, or, if applicable, the
21 business transacted with broker controlled property and casualty
22 insurer act, chapter 48.-- RCW (sections 15 through 20 of this act)."

23 "NEW SECTION. **Sec. 38.** The acts of the managing general agent
24 are considered to be the acts of the insurer on whose behalf it is
25 acting. A managing general agent may be examined as if it were the
26 insurer, as provided in chapter 48.03 RCW."

27 "NEW SECTION. **Sec. 39.** (1) Subject to a hearing in accordance
28 with chapters 34.05 and 48.04 RCW, upon a finding by the commissioner

1 that any person has violated any provision of this chapter, the
2 commissioner may order:

3 (a) For each separate violation, a penalty in an amount of not more
4 than one thousand dollars;

5 (b) Revocation, or suspension for up to one year, of the agent's
6 license; and

7 (c) The managing general agent to reimburse the insurer, the
8 rehabilitator, or liquidator of the insurer for any losses incurred by
9 the insurer caused by a violation of this chapter committed by the
10 managing general agent.

11 (2) The decision, determination, or order of the commissioner under
12 this section shall be subject to judicial review under chapters 34.05
13 and 48.04 RCW.

14 (3) Nothing contained in this section affects the right of the
15 commissioner to impose any other penalties provided for in this title.

16 (4) Nothing contained in this chapter is intended to or in any
17 manner limits or restricts the rights of policyholders, claimants, and
18 auditors."

19 "NEW SECTION. **Sec. 40.** The commissioner may adopt rules for the
20 implementation and administration of the provisions of this chapter,
21 that shall include but are not limited to licensure of managing general
22 agents."

23 "NEW SECTION. **Sec. 41.** No insurer may continue to utilize the
24 services of a managing general agent on and after January 1, 1993,
25 unless that utilization is in compliance with this chapter."

26 "**Sec. 42.** RCW 48.03.010 and 1982 c 181 s 1 are each amended to
27 read as follows:

1 (1) The commissioner shall examine the affairs, transactions,
2 accounts, records, documents, and assets of each authorized insurer as
3 often as he or she deems advisable. ((He)) The commissioner shall so
4 examine each ((domestic)) licensed insurer not less frequently than
5 every five years. Examination of an alien insurer may be limited to
6 its insurance transactions in the United States. In scheduling and
7 determining the nature, scope, and frequency of an examination, the
8 commissioner shall consider such matters as the results of financial
9 statement analyses and ratios, changes in management or ownership,
10 actuarial opinions, reports of independent certified public
11 accountants, and other criteria as set forth in the examiner's handbook
12 adopted by the national association of insurance commissioners and in
13 effect when the commissioner exercises discretion under this section.

14 (2) As often as ((he)) the commissioner deems advisable and at
15 least once in five years, the commissioner shall fully examine each
16 rating organization and examining bureau licensed in this state. As
17 often as he or she deems it advisable ((he)) the commissioner may
18 examine each advisory organization and each joint underwriting or joint
19 reinsurance group, association, or organization.

20 (3) The commissioner shall in like manner examine each insurer or
21 rating organization applying for authority to do business in this
22 state.

23 ~~(4) ((In lieu of making his own examination, the commissioner may~~
24 ~~accept a full report of the last recent examination of a nondomestic~~
25 ~~insurer or rating or advisory organization, or joint underwriting or~~
26 ~~joint reinsurance group, association or organization, certified to by~~
27 ~~the insurance supervisory official of the state of domicile or of~~
28 ~~entry)) In lieu of an examination under this chapter of a foreign or~~
29 ~~alien insurer licensed in this state, the commissioner may accept an~~
30 ~~examination report on the company as prepared by the insurance~~

1 department for the company's state of domicile or port-of-entry state
2 until January 1, 1994. Thereafter, an examination report may be
3 accepted only if: (a) That insurance department was at the time of the
4 examination accredited under the national association of insurance
5 commissioners' financial regulation standards and accreditation
6 program; or (b) the examination was performed either under the
7 supervision of an accredited insurance department or with the
8 participation of one or more examiners employed by an accredited state
9 insurance department who, after a review of the examination work papers
10 and report, state under oath that the examination was performed in a
11 manner consistent with the standards and procedures required by their
12 insurance department.

13 (5) The commissioner may elect to accept and rely on an audit
14 report made by an independent certified public accountant for the
15 insurer in the course of that part of the commissioner's examination
16 covering the same general subject matter as the audit. The
17 commissioner may incorporate the audit report in his or her report of
18 the examination.

19 (6) For the purposes of completing an examination of any company
20 under this chapter, the commissioner may examine or investigate any
21 managing general agent or any other person, or the business of any
22 managing general agent or other person, insofar as that examination or
23 investigation is, in the sole discretion of the commissioner, necessary
24 or material to the examination of the company."

25 "NEW SECTION. Sec. 43. A new section is added to chapter 48.03
26 RCW to read as follows:

27 Upon determining that an examination should be conducted, the
28 commissioner or the commissioner's designee shall appoint one or more
29 examiners to perform the examination and instruct them as to the scope

1 of the examination. In conducting the examination, the examiner shall
2 observe those guidelines and procedures set forth in the examiners'
3 handbook adopted by the national association of insurance
4 commissioners. The commissioner may also employ such other guidelines
5 or procedures as the commissioner may deem appropriate."

6 "Sec. 44. RCW 48.03.040 and 1965 ex.s. c 70 s 1 are each amended
7 to read as follows:

8 (1) No later than sixty days following completion of each
9 examination, the commissioner shall make a full written report of each
10 examination made by him or her containing only facts ascertained from
11 the accounts, records, and documents examined and from the sworn
12 testimony of individuals, and such conclusions and recommendations as
13 may reasonably be warranted from such facts.

14 (2) The report shall be certified by the commissioner or by his or
15 her examiner in charge of the examination, and shall be filed in the
16 commissioner's office subject to subsection (3) of this section.

17 (3) The commissioner shall furnish a copy of the examination report
18 to the person examined not less than ten days and, unless the time is
19 extended by the commissioner, not more than thirty days prior to the
20 filing of the report for public inspection in the commissioner's
21 office. If such person so requests in writing within such ((ten-day))
22 period, the commissioner shall hold a hearing to consider objections of
23 such person to the report as proposed, and shall not so file the report
24 until after such hearing and until after any modifications in the
25 report deemed necessary by the commissioner have been made.

26 (4) Within thirty days of the end of the period described in
27 subsection (3) of this section unless extended by order of the
28 commissioner, the commissioner shall consider the report, together with

1 any written submissions or rebuttals and any relevant portions of the
2 examiner's workpapers and enter an order:

3 (a) Adopting the examination report as filed or with modification
4 or corrections. If the examination report reveals that the company is
5 operating in violation of any law, regulation, or order of the
6 commissioner, the commissioner may order the company to take any action
7 the commissioner considers necessary and appropriate to cure that
8 violation;

9 (b) Rejecting the examination report with directions to the
10 examiners to reopen the examination for purposes of obtaining
11 additional data, documentation, or information, and refiling under this
12 section; or

13 (c) Calling for an investigatory hearing with no less than twenty
14 days' notice to the company for purposes of obtaining additional
15 documentation, data, information, and testimony.

16 (5) All orders entered under subsection (4) of this section shall
17 be accompanied by findings and conclusions resulting from the
18 commissioner's consideration and review of the examination report,
19 relevant examiner workpapers, and any written submissions or rebuttals.
20 Such an order shall be considered a final administrative decision and
21 may be appealed under the administrative procedure act, chapter 34.05
22 RCW, and shall be served upon the company by certified mail, together
23 with a copy of the adopted examination report. A copy of the adopted
24 examination report shall be sent by certified mail to each director at
25 the director's resident address.

26 (6)(a) Upon the adoption of the examination report under subsection
27 (4) of this section, the commissioner shall continue to hold the
28 content of the examination report as private and confidential
29 information for a period of five days except that the order may be
30 disclosed to the person examined. Thereafter, the commissioner may

1 open the report for public inspection so long as no court of competent
2 jurisdiction has stayed its publication.

3 (b) Nothing in this title prohibits the commissioner from
4 disclosing the content of an examination report, preliminary
5 examination report or results, or any matter relating thereto, to the
6 insurance department of any other state or country, or to law
7 enforcement officials of this or any other state or agency of the
8 federal government at any time, so long as the agency or office
9 receiving the report or matters relating thereto agrees in writing to
10 hold it confidential and in a manner consistent with this chapter.

11 (c) In the event the commissioner determines that regulatory action
12 is appropriate as a result of any examination, he or she may initiate
13 any proceedings or actions as provided by law.

14 (d) Nothing contained in this section requires the commissioner to
15 disclose any information or records which would indicate or show the
16 existence or content of any investigation or activity of a criminal
17 justice agency."

18 **"Sec. 45.** RCW 48.03.050 and 1947 c 79 s .03.05 are each amended to
19 read as follows:

20 The commissioner may withhold from public inspection any
21 examination or investigation report for so long as he or she deems it
22 advisable, subject to the provisions in RCW 48.32.080."

23 **"Sec. 46.** RCW 48.03.060 and 1981 c 339 s 2 are each amended to
24 read as follows:

25 (1) Examinations within this state of any insurer domiciled or
26 having its home offices in this state, other than a title insurer, made
27 by the commissioner or his or her examiners and employees shall, except

1 as to fees, mileage, and expense incurred as to witnesses, be at the
2 expense of the state.

3 (2) Every other examination, whatsoever, or any part of the
4 examination of any person domiciled or having its home offices in this
5 state requiring travel and services outside this state, shall be made
6 by the commissioner or by examiners designated by ~~((him))~~ the
7 commissioner and shall be at the expense of the person examined; but a
8 domestic insurer shall not be liable for the compensation of examiners
9 employed by the commissioner for such services outside this state.

10 (3) When making an examination under this chapter, the commissioner
11 may retain attorneys, appraisers, independent actuaries, independent
12 certified public accountants, or other professionals and specialists as
13 examiners, the cost of which shall be borne by the person that is the
14 subject of the examination, except as provided in subsection (1) of
15 this section.

16 (4) The person examined and liable therefor shall reimburse the
17 state upon presentation of an itemized statement thereof, for the
18 actual travel expenses of the commissioner's examiners, their
19 reasonable living expense allowance, and their per diem compensation,
20 including salary and the employer's cost of employee benefits, at a
21 reasonable rate approved by the commissioner, incurred on account of
22 the examination. Per diem salary and expenses for employees examining
23 insurers domiciled outside the state of Washington shall be established
24 by the commissioner on the basis of the National Association of
25 Insurance Commissioner's recommended salary and expense schedule for
26 zone examiners, or the salary schedule established by the state
27 personnel board and the expense schedule established by the office of
28 financial management, whichever is higher. Domestic title insurer
29 shall pay the examination expense and costs to the commissioner as
30 itemized and billed by him or her.

1 The commissioner or his or her examiners shall not receive or
2 accept any additional emolument on account of any examination.

3 (5) Nothing contained in this chapter limits the commissioner's
4 authority to terminate or suspend any examination in order to pursue
5 other legal or regulatory action pursuant to the insurance laws of this
6 state. Findings of fact and conclusions made pursuant to any
7 examination shall be prima facie evidence in any legal or regulatory
8 action."

9 "NEW SECTION. Sec. 47. A new section is added to chapter 48.03
10 RCW to read as follows:

11 (1) No examiner may be appointed by the commissioner if the
12 examiner, either directly or indirectly, has a conflict of interest or
13 is affiliated with the management of or owns a pecuniary interest in
14 any person subject to examination under this chapter. This section
15 does not automatically preclude an examiner from being:

16 (a) A policyholder or claimant under an insurance policy;

17 (b) A grantor of a mortgage or similar instrument on the examiner's
18 residence to a regulated entity if done under customary terms and in
19 the ordinary course of business;

20 (c) An investment owner in shares of regulated diversified
21 investment companies; or

22 (d) A settlor or beneficiary of a blind trust into which any
23 otherwise impermissible holdings have been placed.

24 (2) Notwithstanding the requirements of subsection (1) of this
25 section, the commissioner may retain from time to time, on an
26 individual basis, qualified actuaries, certified public accountants, or
27 other similar individuals who are independently practicing their
28 professions, even though those persons may from time to time be

1 similarly employed or retained by persons subject to examination under
2 this chapter."

3 "NEW SECTION. Sec. 48. A new section is added to chapter 48.03
4 RCW to read as follows:

5 (1) No cause of action may arise nor may any liability be imposed
6 against the commissioner, the commissioner's authorized
7 representatives, or any examiner appointed by the commissioner for any
8 statements made or conduct performed in good faith while carrying out
9 the provisions of this chapter.

10 (2) No cause of action may arise nor may any liability be imposed
11 against any person for the act of communicating or delivering
12 information or data to the commissioner or the commissioner's
13 authorized representative or examiner pursuant to an examination made
14 under this chapter, if that act of communication or delivery was
15 performed in good faith and without fraudulent intent or the intent to
16 deceive.

17 (3) This section does not modify any privilege or immunity
18 previously enjoyed by a person identified in subsection (1) of this
19 section.

20 (4) A person identified in subsection (1) of this section is
21 entitled to an award of attorneys' fees and costs if he or she is the
22 prevailing party in a civil cause of action for libel, slander, or any
23 other tort arising out of activities in carrying out the provisions of
24 this chapter and the party bringing the action was not substantially
25 justified in doing so. For purposes of this section a proceeding is
26 "substantially justified" if it had a reasonable basis in law or fact
27 at the time that it was initiated.

28 (5) If any claim is made or threatened of the sort described in
29 subsection (1) of this section, the commissioner shall provide or pay

1 for the defense of himself or herself, the examiner or representative,
2 and shall pay any judgment or settlement, until it is determined that
3 the person did not act in good faith or did act with fraudulent intent
4 or the intent to deceive.

5 (6) The immunity, indemnification, and other protections under this
6 section are in addition to that now or hereafter existing under other
7 law."

8 "Sec. 49. RCW 48.05.340 and 1991 sp.s. c 5 s 1 are each amended to
9 read as follows:

10 (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority
11 to transact any one kind of insurance as defined in chapter 48.11 RCW
12 or combination of kinds of insurance as shown below, a foreign or alien
13 insurer, whether stock or mutual, or a domestic insurer hereafter
14 formed shall possess and thereafter maintain unimpaired paid-in capital
15 stock, if a stock insurer, or unimpaired surplus if a mutual insurer,
16 and shall possess when first so authorized additional funds in surplus
17 as follows:

	Paid-in capital	
Kind or kinds	stock or	Additional
of insurance	basic surplus	surplus
Life	\$ 2,000,000	2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000

29 Any two of the following kinds of

1	insurance: Property, marine &		
2	transportation, general		
3	casualty, vehicle, surety,		
4	disability	3,000,000	3,000,000
5	Multiple lines (all insurances		
6	except life and title		
7	insurance)	3,000,000	3,000,000
8	Title (in accordance with the		
9	provisions of chapter 48.29		
10	RCW)		

11 (2) Capital and surplus requirements are based upon all the kinds
12 of insurance transacted by the insurer wherever it may operate or
13 propose to operate, whether or not only a portion of such kinds are to
14 be transacted in this state.

15 (3) An insurer holding a certificate of authority to transact
16 insurance in this state immediately prior to July 1, 1991, may continue
17 to be authorized to transact the same kinds of insurance as long as it
18 is otherwise qualified for such authority and thereafter maintains
19 unimpaired the amount of paid-in capital stock, if a stock insurer, or
20 basic surplus, if a mutual or reciprocal insurer, and special surplus
21 as required of it under laws in force immediately prior to such
22 effective date; and any proposed domestic insurer which is in process
23 of formation or financing under a solicitation permit which is
24 outstanding immediately prior to July 1, 1991, shall, if otherwise
25 qualified therefor, be authorized to transact any kind or kinds of
26 insurance upon the basis of the capital and surplus requirements of
27 such an insurer under the laws in force immediately prior to such
28 effective date. The requirements for paid-in capital stock, basic
29 surplus, and special surplus that were in effect immediately before
30 July 1, 1991, apply to any completed application for a certificate of

1 authority from a foreign or alien insurer that is on file with the
2 commissioner on July 1, 1991.

3 (4) The commissioner may, by rule, require insurers to maintain
4 additional capital and surplus based upon the type, volume, and nature
5 of insurance business transacted consistent with the methods then
6 adopted by the national association of insurance commissioners for
7 determining the appropriate amount of additional capital and surplus to
8 be required. In the absence of an applicable rule, the commissioner
9 may, after a hearing or with the consent of the insurer, require an
10 insurer to have and maintain a larger amount of capital or surplus than
11 prescribed under this section or the rules pursuant to this section,
12 based upon the volume and kinds of insurance transacted by the insurer
13 and on the principles of risk-based capital as determined by the
14 national association of insurance commissioners."

15 "Sec. 50. RCW 48.11.140 and 1983 c 3 s 149 are each amended to
16 read as follows:

17 (1) No insurer shall retain any (~~fire or surety~~) risk on any one
18 subject of insurance, whether located or to be performed in this state
19 or elsewhere, in an amount exceeding ten percent of its surplus to
20 policyholders(~~, except that:~~

21 ~~(a) Domestic mutual insurers may insure up to the applicable limits~~
22 ~~provided by RCW 48.05.340, if greater.~~

23 ~~(b) In the case of fire risks adequately protected by automatic~~
24 ~~sprinklers or fire risks principally of noncombustible construction and~~
25 ~~occupancy, an insurer may retain fire risks as to any one subject in an~~
26 ~~amount not exceeding twenty five percent of the sum of (i) its unearned~~
27 ~~premium reserve and (ii) its surplus to policyholders)).~~

28 (2) For the purposes of this section, a "subject of insurance" as
29 to insurance against fire includes all properties insured by the same

1 insurer which are reasonably subject to loss or damage from the same
2 fire.

3 (3) Reinsurance in an alien reinsurer not qualified under RCW
4 48.05.300 may not be deducted in determining risk retained for the
5 purposes of this section.

6 (4) In the case of surety insurance, the net retention shall be
7 computed after deduction of reinsurances, the amount assumed by any
8 co-surety, the value of any security deposited, pledged, or held
9 subject to the consent of the surety and for the protection of the
10 surety.

11 (5) This section ~~((shall))~~ does not apply to life insurance,
12 disability insurance, title insurance, or insurance of marine risks or
13 marine protection and indemnity risks."

14 "**Sec. 51.** RCW 48.12.180 and 1973 c 151 s 1 are each amended to
15 read as follows:

16 (1) Securities, other than those referred to in RCW 48.12.170, held
17 by an insurer shall be valued, in the discretion of the commissioner,
18 at their market value, or at their appraised value, or at prices
19 determined by him or her as representing their fair market value(~~(,all~~
20 ~~consistent with any current method for the valuation of any such~~
21 ~~security formulated or approved by the National Association of~~
22 ~~Insurance Commissioners))~~).

23 (2) Preferred or guaranteed stocks or shares while paying full
24 dividends may be carried at a fixed value in lieu of market value, at
25 the discretion of the commissioner and in accordance with such method
26 of computation as he or she may approve.

27 (3) The stock of a subsidiary of an insurer shall be valued on the
28 basis of the greater of (a) the value of only such of the assets of
29 such subsidiary as would constitute lawful investments for the insurer

1 if acquired or held directly by the insurer or (b) such other value
2 determined pursuant to rules and cumulative limitations which shall be
3 promulgated by the commissioner to effectuate the purposes of this
4 chapter.

5 (4) The commissioner has full discretion in determining the method
6 of calculating values according to the rules set forth in this section,
7 and consistent with such methods as then adopted by the national
8 association of insurance commissioners."

9 "Sec. 52. RCW 48.12.190 and 1967 ex.s. c 95 s 10 are each amended
10 to read as follows:

11 (1) Real property acquired pursuant to a mortgage loan or a
12 contract for a deed, in the absence of a recent appraisal deemed by the
13 commissioner to be reliable, shall not be valued at an amount greater
14 than the unpaid principal of the defaulted loan or contract at the date
15 of such acquisition, together with any taxes and expenses paid or
16 incurred in connection with such acquisition, and the cost of
17 improvements thereafter made by the insurer and any amounts thereafter
18 paid by the insurer on assessments levied for improvements in
19 connection with the property.

20 (2) Other real property held by an insurer shall not be valued at
21 any amount in excess of fair value, less reasonable depreciation based
22 on the estimated life of the improvements.

23 (3) Personal property acquired pursuant to chattel mortgages made
24 under RCW 48.13.150 shall not be valued at an amount greater than the
25 unpaid balance of principal on the defaulted loan at date of
26 acquisition together with taxes and expenses incurred in connection
27 with such acquisition, or the fair value of such property, whichever
28 amount is the lesser.

1 (4) The commissioner has full discretion in determining the method
2 of calculating values according to the rules set forth in this section,
3 and consistent with such methods as then adopted by the national
4 association of insurance commissioners."

5 **"Sec. 53.** RCW 48.12.200 and 1947 c 79 s .12.20 are each amended to
6 read as follows:

7 (1) Purchase money mortgages shall be valued in an amount not
8 exceeding the acquisition cost of the real property covered thereby or
9 ninety percent of the fair value of such real property, whichever is
10 less.

11 (2) The commissioner has full discretion in determining the method
12 of calculating values according to the rules set forth in this section,
13 and consistent with such methods as then adopted by the national
14 association of insurance commissioners."

15 **"Sec. 54.** RCW 48.14.010 and 1988 c 248 s 7 are each amended to
16 read as follows:

17 (1) The commissioner shall collect in advance the following fees:

18 **(a) For filing charter documents:**

19 (i) Original charter documents, bylaws or
20 record of organization of insurers, or
21 certified copies thereof, required to
22 be filed \$250.00

23 (ii) Amended charter documents, or certified
24 copy thereof, other than amendments of
25 bylaws \$ 10.00

26 (iii) No additional charge or fee shall be

1 required for filing any of such
2 documents in the office of the
3 secretary of state.

4 **(b) Certificate of authority:**

- 5 (i) Issuance \$ 25.00
- 6 (ii) Renewal \$ 25.00

7 **(c) Annual statement of insurer, filing \$ 20.00**

8 **(d) Organization or financing of domestic insurers and**
9 **affiliated corporations:**

- 10 (i) Application for solicitation permit, filing \$100.00
- 11 (ii) Issuance of solicitation permit \$ 25.00

12 **(e) Agents' licenses:**

- 13 (i) Agent's qualification licenses each year \$ 25.00
- 14 (ii) Filing of appointment of each such agent,
15 each year \$ 10.00
- 16 (iii) Limited license issued pursuant to RCW
17 48.17.190, each year \$ 10.00

18 **(f) Reinsurance intermediary licenses:**

- 19 (i) Reinsurance intermediary-broker, each
20 year \$ 50.00
- 21 (ii) Reinsurance intermediary-manager, each
22 year \$100.00

23 **(g) Brokers' licenses:**

- 24 (i) Broker's license, each year \$ 50.00
- 25 (ii) Surplus line broker, each year \$100.00

26 ~~((g))~~ **(h) Solicitors' license, each year. \$ 10.00**

27 ~~((h))~~ **(i) Adjusters' licenses:**

- 28 (i) Independent adjuster, each year \$ 25.00
- 29 (ii) Public adjuster, each year \$ 25.00

30 ~~((i))~~ **(j) Resident general agent's license, each year . . . \$ 25.00**

1 ~~((+j))~~ (k) Managing general agent appointment, each
2 year \$100.00

3 (1) Examination for license, each examination:

4 All examinations, except examinations administered
5 by an independent testing service, the fees for
6 which are to be approved by the commissioner and
7 collected directly by and retained by such
8 independent testing service \$ 10.00

9 ~~((+k))~~ (m) Miscellaneous services:

- 10 (i) Filing other documents \$ 5.00
- 11 (ii) Commissioner's certificate under seal \$ 5.00
- 12 (iii) Copy of documents filed in the commissioner's
13 office, reasonable charge therefor as
14 determined by the commissioner.

15 (2) All fees so collected shall be remitted by the commissioner to
16 the state treasurer not later than the first business day following,
17 and shall be placed to the credit of the general fund: PROVIDED, That
18 fees for examinations administered by an independent testing service
19 which are approved by the commissioner pursuant to subsection
20 (1)~~((+j))~~ (1) of this section shall be collected directly by such
21 independent testing service and retained by it."

22 "NEW SECTION. Sec. 55. (1) An officer, manager, director,
23 trustee, owner, employee, or agent of an insurer or other person with
24 authority over or in charge of a segment of the insurer's affairs shall
25 cooperate with the commissioner in a proceeding under this chapter or
26 an investigation preliminary to the proceeding. The term "person" as
27 used in this section includes a person who exercises control directly
28 or indirectly over activities of the insurer through a holding company

1 or other affiliate of the insurer. "To cooperate" as used in this
2 section includes the following:

3 (a) To reply promptly in writing to any inquiry from the
4 commissioner requesting such a reply; and

5 (b) To make available to the commissioner books, accounts,
6 documents, or other records or information or property of or pertaining
7 to the insurer and in his or her possession, custody, or control.

8 (2) A person may not obstruct or interfere with the commissioner in
9 the conduct of a delinquency proceeding or an investigation preliminary
10 or incidental thereto.

11 (3) This section does not abridge existing legal rights, including
12 the right to resist a petition for liquidation or other delinquency
13 proceedings, or other orders.

14 (4) A person included within subsection (1) of this section who
15 fails to cooperate with the commissioner, or a person who obstructs or
16 interferes with the commissioner in the conduct of any delinquency
17 proceeding or an investigation preliminary or incidental thereto, or
18 who violates an order the commissioner issued validly under this
19 chapter may:

20 (a) Be sentenced to pay a fine not exceeding ten thousand dollars
21 or to undergo imprisonment for a term of not more than one year, or
22 both; or

23 (b) After a hearing, be subject to the imposition by the
24 commissioner of a civil penalty not to exceed ten thousand dollars and
25 be subject further to the revocation or suspension of insurance
26 licenses issued by the commissioner."

27 "NEW SECTION. Sec. 56. (1) No delinquency proceeding may be
28 commenced under this chapter by anyone other than the commissioner of

1 this state and no court has jurisdiction to entertain a proceeding
2 commenced by another person.

3 (2) No court of this state has jurisdiction to entertain a
4 complaint praying for the dissolution, liquidation, rehabilitation,
5 sequestration, conservation, or receivership of an insurer, or praying
6 for an injunction or restraining order or other relief preliminary to,
7 incidental to, or relating to such proceedings, other than in
8 accordance with this chapter.

9 (3) In addition to other grounds for jurisdiction provided by the
10 law of this state, a court of this state having jurisdiction of the
11 subject matter has jurisdiction over a person served under the rules of
12 civil procedure or other applicable provisions of law in an action
13 brought by the receiver of a domestic insurer or an alien insurer
14 domiciled in this state:

15 (a) If the person served is an agent, broker, or other person who
16 has written policies of insurance for or has acted in any manner on
17 behalf of an insurer against which a delinquency proceeding has been
18 instituted, in an action resulting from or incident to such a
19 relationship with the insurer; or

20 (b) If the person served is a reinsurer who has entered into a
21 contract of reinsurance with an insurer against which a delinquency
22 proceeding has been instituted, or is an agent or broker of or for the
23 reinsurer, in an action on or incident to the reinsurance contract; or

24 (c) If the person served is or has been an officer, director,
25 manager, trustee, organizer, promoter, or other person in a position of
26 comparable authority or influence over an insurer against which a
27 delinquency proceeding has been instituted, in an action resulting from
28 or incident to such a relationship with the insurer; or

29 (d) If the person served is or was at the time of the institution
30 of the delinquency proceeding against the insurer holding assets in

1 which the receiver claims an interest on behalf of the insurer, in an
2 action concerning the assets; or

3 (e) If the person served is obligated to the insurer in any way, in
4 an action on or incident to the obligation.

5 (4) If the court on motion of a party finds that an action should
6 as a matter of substantial justice be tried in a forum outside this
7 state, the court may enter an appropriate order to stay further
8 proceedings on the action in this state."

9 "NEW SECTION. Sec. 57. (1) The persons entitled to protection
10 under this section are:

11 (a) The commissioner and any other receiver responsible for the
12 conduct of a delinquency proceeding under this chapter, including
13 present and former commissioners and receivers; and

14 (b) The commissioner's employees, meaning all present and former
15 special deputies and assistant special deputies and special receivers
16 appointed by the commissioner and all persons whom the commissioner,
17 special deputies, or assistant special deputies have employed to assist
18 in a delinquency proceeding under this chapter. Attorneys,
19 accountants, auditors, and other professional persons or firms who are
20 retained as independent contractors, and their employees, shall not be
21 considered employees of the commissioner for purposes of this section.

22 (2) The commissioner and the commissioner's employees are immune
23 from suit and liability, both personally and in their official
24 capacities, for a claim for damage to or loss of property or personal
25 injury or other civil liability caused by or resulting from an alleged
26 act or omission of the commissioner or an employee arising out of or by
27 reason of his or her duties or employment. However, nothing in this
28 subsection may be construed to hold the commissioner or an employee
29 immune from suit or liability for any damage, loss, injury, or

1 liability caused by the intentional or willful and wanton misconduct of
2 the commissioner or an employee.

3 (3) If a legal action is commenced against the commissioner or an
4 employee, whether against him or her personally or in his or her
5 official capacity, alleging property damage, property loss, personal
6 injury, or other civil liability caused by or resulting from an alleged
7 act or omission of the commissioner or an employee arising out of or by
8 reason of his or her duties or employment, the commissioner and any
9 employee shall be indemnified from the assets of the insurer for all
10 expenses, attorneys' fees, judgments, settlements, decrees, or amounts
11 due and owing or paid in satisfaction of or incurred in the defense of
12 the legal action unless it is determined upon a final adjudication on
13 the merits that the alleged act or omission of the commissioner or
14 employee giving rise to the claim did not arise out of or by reason of
15 his or her duties or employment, or was caused by intentional or
16 willful and wanton misconduct.

17 (a) Attorneys' fees and related expenses incurred in defending a
18 legal action for which immunity or indemnity is available under this
19 section shall be paid from the assets of the insurer, as they are
20 incurred, in advance of the final disposition of such action upon
21 receipt of an undertaking by or on behalf of the commissioner or
22 employee to repay the attorneys' fees and expenses if it shall
23 ultimately be determined upon a final adjudication on the merits and
24 that the commissioner or employee is not entitled to immunity or
25 indemnity under this section.

26 (b) Any indemnification under this section is an administrative
27 expense of the insurer.

28 (c) In the event of an actual or threatened litigation against the
29 commissioner or an employee for which immunity or indemnity may be
30 available under this section, a reasonable amount of funds that in the

1 judgment of the commissioner may be needed to provide immunity or
2 indemnity shall be segregated and reserved from the assets of the
3 insurer as security for the payment of indemnity until all applicable
4 statutes of limitation have run or all actual or threatened actions
5 against the commissioner or an employee have been completely and
6 finally resolved, and all obligations of the insurer and the
7 commissioner under this section shall have been satisfied.

8 (d) In lieu of segregation and reserving of funds, the commissioner
9 may, in his or her discretion, obtain a surety bond or make other
10 arrangements that will enable the commissioner to secure fully the
11 payment of all obligations under this section.

12 (4) If a legal action against an employee for which indemnity may
13 be available under this section is settled prior to final adjudication
14 on the merits, the insurer must pay the settlement amount on behalf of
15 the employee, or indemnify the employee for the settlement amount,
16 unless the commissioner determines:

17 (a) That the claim did not arise out of or by reason of the
18 employee's duties or employment; or

19 (b) That the claim was caused by the intentional or willful and
20 wanton misconduct of the employee.

21 (5) In a legal action in which the commissioner is a defendant,
22 that portion of a settlement relating to the alleged act or omission of
23 the commissioner is subject to the approval of the court before which
24 the delinquency proceeding is pending. The court may not approve that
25 portion of the settlement if it determines:

26 (a) That the claim did not arise out of or by reason of the
27 commissioner's duties or employment; or

28 (b) That the claim was caused by the intentional or willful and
29 wanton misconduct of the commissioner.

1 (6) Nothing in this section removes or limits an immunity,
2 indemnity, benefit of law, right, or defense otherwise available to the
3 commissioner, an employee, or any other person, not an employee under
4 subsection (1)(b) of this section, who is employed by or in the office
5 of the commissioner or otherwise employed by the state.

6 (7)(a) Subsection (2) of this section applies to any suit based in
7 whole or in part on an alleged act or omission that takes place on or
8 after the effective date of this section.

9 (b) No legal action lies against the commissioner or an employee
10 based in whole or in part on an alleged act or omission that took place
11 prior to the effective date of this section, unless suit is filed and
12 valid service of process is obtained within twelve months after the
13 effective date of this section.

14 (c) Subsections (3), (4), and (5) of this section apply to a suit
15 that is pending on or filed after the effective date of this section
16 without regard to when the alleged act or omission took place."

17 "NEW SECTION. Sec. 58. (1) The commissioner may petition the
18 court alleging, with respect to a domestic insurer:

19 (a) That there exists a ground that would justify a court order for
20 a formal delinquency proceeding against an insurer under this chapter;

21 (b) That the interests of policyholders, creditors, or the public
22 will be endangered by delay; and

23 (c) The contents of an order deemed necessary by the commissioner.

24 (2) Upon a filing under subsection (1) of this section, the court
25 may issue forthwith, ex parte and without a hearing, the requested
26 order that shall: Direct the commissioner to take possession and
27 control of all or a part of the property, books, accounts, documents,
28 and other records of an insurer, and of the premises occupied by it for
29 transaction of its business; and until further order of the court

1 enjoin the insurer and its officers, managers, agents, and employees
2 from disposition of its property and from the transaction of its
3 business except with the written consent of the commissioner.

4 (3) The court shall specify in the order what the order's duration
5 shall be, which shall be such time as the court deems necessary for the
6 commissioner to ascertain the condition of the insurer. On motion of
7 either party or on its own motion, the court may from time to time hold
8 hearings it deems desirable after such notice as it deems appropriate,
9 and may extend, shorten, or modify the terms of the seizure order. The
10 court shall vacate the seizure order if the commissioner fails to
11 commence a formal proceeding under this chapter after having had a
12 reasonable opportunity to do so. An order of the court pursuant to a
13 formal proceeding under this chapter vacates the seizure order.

14 (4) Entry of a seizure order under this section does not constitute
15 an anticipatory breach of a contract of the insurer.

16 (5) An insurer subject to an ex parte order under this section may
17 petition the court at any time after the issuance of an order under
18 this section for a hearing and review of the order. The court shall
19 hold the hearing and review not more than fifteen days after the
20 request. A hearing under this subsection may be held privately in
21 chambers and it shall be so held if the insurer proceeded against so
22 requests.

23 (6) If, at any time after the issuance of an order under this
24 section, it appears to the court that a person whose interest is or
25 will be substantially affected by the order did not appear at the
26 hearing and has not been served, the court may order that notice be
27 given. An order that notice be given does not stay the effect of an
28 order previously issued by the court."

1 "NEW SECTION. Sec. 59. (1) All policies, including bonds and
2 other noncancellable business, other than life or health insurance or
3 annuities, in effect at the time of issuance of an order of liquidation
4 continue in force only until the earliest of:

5 (a) The end of a period of thirty days from the date of entry of
6 the liquidation order;

7 (b) The expiration of the policy coverage;

8 (c) The date when the insured has replaced the insurance coverage
9 with equivalent insurance in another insurer or otherwise terminated
10 the policy;

11 (d) The liquidator has effected a transfer of the policy
12 obligation; or

13 (e) The date proposed by the liquidator and approved by the court
14 to cancel coverage.

15 (2) An order of liquidation terminates coverages at the time
16 specified in subsection (1) of this section for purposes of any other
17 statute.

18 (3) Policies of life or health insurance or annuities shall
19 continue in force for the period and under the terms provided by an
20 applicable guaranty association or foreign guaranty association.

21 (4) Policies of life or health insurance or annuities or a period
22 or coverage of the policies not covered by a guaranty association or
23 foreign guaranty association shall terminate under subsections (1) and
24 (2) of this section."

25 "NEW SECTION. Sec. 60. (1) Upon issuance of an order appointing
26 a liquidator of a domestic insurer or of an alien insurer domiciled in
27 this state, an action at law or equity or in arbitration may not be
28 brought against the insurer or liquidator, whether in this state or
29 elsewhere, nor may such an existing action be maintained or further

1 presented after issuance of the order. The courts of this state shall
2 give full faith and credit to injunctions against the liquidator or the
3 company when the injunctions are included in an order to liquidate an
4 insurer issued under laws in other states corresponding to this
5 subsection. Whenever, in the liquidator's judgment, protection of the
6 estate of the insurer necessitates intervention in an action against
7 the insurer that is pending outside this state, the liquidator may
8 intervene in the action. The liquidator may defend an action in which
9 he or she intervenes under this section at the expense of the estate of
10 the insurer.

11 (2) The liquidator may, upon or after an order for liquidation,
12 within two years or such other longer time as applicable law may
13 permit, institute an action or proceeding on behalf of the estate of
14 the insurer upon a cause of action against which the period of
15 limitation fixed by applicable law has not expired at the time of the
16 filing of the petition upon which the order is entered. Where, by an
17 agreement, a period of limitation is fixed for instituting a suit or
18 proceeding upon a claim, or for filing a claim, proof of claim, proof
19 of loss, demand, notice, or the like, or where in a proceeding,
20 judicial or otherwise, a period of limitation is fixed, either in the
21 proceeding or by applicable law, for taking an action, filing a claim
22 or pleading, or doing an act, and where in such a case the period had
23 not expired at the date of the filing of the petition, the liquidator
24 may, for the benefit of the estate, take such an action or do such an
25 act, required of or permitted to the insurer, within a period of one
26 hundred eighty days after the entry of an order for liquidation, or
27 within such further period as is shown to the satisfaction of the court
28 not to be unfairly prejudicial to the other party.

29 (3) A statute of limitation or defense of laches does not run with
30 respect to an action against an insurer between the filing of a

1 petition for liquidation against an insurer and the denial of the
2 petition. An action against the insurer that might have been commenced
3 when the petition was filed may be commenced for at least sixty days
4 after the petition is denied.

5 (4) A guaranty association or foreign guaranty association has
6 standing to appear in a court proceeding concerning the liquidation of
7 an insurer if the association is or may become liable to act as a
8 result of the liquidation."

9 "NEW SECTION. Sec. 61. The amount recoverable by the
10 commissioner from reinsurers may not be reduced as a result of the
11 delinquency proceedings, regardless of any provision in the reinsurance
12 contract or other agreement. Payment made directly to an insured or
13 other creditor shall not diminish the reinsurer's obligation to the
14 insurer's estate except when the reinsurance contract provided for
15 direct coverage of a named insured and the payment was made in
16 discharge of that obligation."

17 "NEW SECTION. Sec. 62. (1)(a) An agent, broker, premium finance
18 company, or any other person, other than the policy owner or the
19 insured, responsible for the payment of a premium is obligated to pay
20 any unpaid premium for the full policy term due the insurer at the time
21 of the declaration of insolvency, whether earned or unearned, as shown
22 on the records of the insurer. The liquidator also has the right to
23 recover from the person a part of an unearned premium that represents
24 commission of the person. Credits or setoffs or both may not be
25 allowed to an agent, broker, or premium finance company for amounts
26 advanced to the insurer by the agent, broker, or premium finance
27 company on behalf of, but in the absence of a payment by, the policy
28 owner or the insured.

1 (b) Notwithstanding the provisions of (a) of this subsection, the
2 agent, broker, premium finance company, or other person, is not liable
3 for uncollected unearned premium of the insurer. A presumption exists
4 that the premium as shown on the books of the insurer is collected and
5 the burden is upon the agent, broker, premium finance company, or other
6 person to demonstrate by a preponderance of the evidence that the
7 unearned premium was not actually collected. For purposes of this
8 subsection, "unearned premium" means that portion of an insurance
9 premium covering the unexpired term of the policy or the unexpired
10 period of the policy period.

11 (c) An insured is obligated to pay any unpaid earned premium due
12 the insurer at the time of the declaration of insolvency, as shown on
13 the records of the insurer.

14 (2) Upon a violation of this section, the commissioner may pursue
15 either one or both of the following courses of action:

16 (a) Suspend or revoke or refuse to renew the licenses of the
17 offending party or parties;

18 (b) Impose a penalty of not more than one thousand dollars for each
19 violation.

20 (3) Before the commissioner may take an action as set forth in
21 subsection (2) of this section, he or she shall give written notice to
22 the person accused of violating the law, stating specifically the
23 nature of the alleged violation, and fixing a time and place, at least
24 ten days thereafter, when a hearing on the matter shall be held. After
25 the hearing, or upon failure of the accused to appear at the hearing,
26 the commissioner, if he or she finds a violation, shall impose those
27 penalties under subsection (2) of this section that he or she deems
28 advisable.

29 (4) When the commissioner takes action in any or all of the ways
30 set out in subsection (2) of this section, the party aggrieved has the

1 rights granted under the administrative procedure act, chapter 34.05
2 RCW."

3 "NEW SECTION. Sec. 63. (1) When a claim is denied in whole or
4 in part by the liquidator, written notice of the determination must be
5 given to the claimant or the claimant's attorney by first class mail at
6 the address shown in the proof of claim. Within sixty days from the
7 mailing of the notice, the claimant may file his or her objections with
8 the liquidator. If no such a filing is made, the claimant may not
9 further object to the determination.

10 (2) Whenever objections are filed with the liquidator and the
11 liquidator does not alter his or her denial of the claim as a result of
12 the objections, the liquidator shall ask the court for a hearing as
13 soon as practicable and give notice of the hearing by first class mail
14 to the claimant or the claimant's attorney and to other persons
15 directly affected, not less than ten nor more than thirty days before
16 the date of the hearing. The matter may be heard by the court or by a
17 court-appointed referee who shall submit findings of fact along with
18 his or her recommendation."

19 "NEW SECTION. Sec. 64. Whenever a creditor whose claim against
20 an insurer is secured, in whole or in part, by the undertaking of
21 another person, fails to prove and file that claim, the other person
22 may do so in the creditor's name, and shall be subrogated to the rights
23 of the creditor, whether the claim has been filed by the creditor or by
24 the other person in the creditor's name, to the extent that he or she
25 discharges the undertaking. In the absence of an agreement with the
26 creditor to the contrary, the other person is not entitled to a
27 distribution until the amount paid to the creditor on the undertaking
28 plus the distributions paid on the claim from the insurer's estate to

1 the creditor equals the amount of the entire claim of the creditor.
2 Excess received by the creditor shall be held by him or her in trust
3 for the other person. The term "other person" as used in this section
4 does not apply to a guaranty association or foreign guaranty
5 association."

6 "NEW SECTION. Sec. 65. Unclaimed funds subject to distribution
7 remaining in the liquidator's hands when he or she is ready to apply to
8 the court for discharge, including the amount distributable to a person
9 who is unknown or cannot be found, shall be deposited with the state
10 treasurer, and shall be paid without interest to the person entitled
11 thereto or his or her legal representative upon proof satisfactory to
12 the state treasurer of his or her right thereto. An amount on deposit
13 not claimed within six years from the discharge of the liquidator is
14 deemed to have been abandoned and shall be escheated without formal
15 escheat proceedings and be deposited with the state treasurer."

16 "NEW SECTION. Sec. 66. After the liquidation proceeding has
17 been terminated and the liquidator discharged, the commissioner or
18 other interested party may at any time petition the court to reopen the
19 proceedings for good cause, including the discovery of additional
20 assets. If the court is satisfied that there is justification for
21 reopening, it shall so order."

22 "NEW SECTION. Sec. 67. (1) If no domiciliary receiver has been
23 appointed, the commissioner may apply to the court for an order
24 directing him or her to liquidate the assets found in this state of a
25 foreign insurer or an alien insurer not domiciled in this state, on any
26 of the grounds stated in: RCW 48.31.030, except (10); 48.31.050(2); or
27 48.31.080.

1 (2) When an order is sought under subsection (1) of this section,
2 the court shall cause the insurer to be given thirty days' notice and
3 time to respond, or a lesser period reasonable under the circumstances.

4 (3) If it appears to the court that the best interests of
5 creditors, policyholders, and the public require, the court may issue
6 an order to liquidate in whatever terms it deems appropriate. The
7 filing or recording of the order with the recorder of deeds of the
8 county in which the principal business of the company in this state is
9 located or the county in which its principal office or place of
10 business in this state is located, imparts the same notice as a deed or
11 other evidence of title duly filed or recorded with that recorder of
12 deeds would have imparted.

13 (4) If a domiciliary liquidator is appointed in a reciprocal state
14 while a liquidation is proceeding under this section, the liquidator
15 under this section shall thereafter act as ancillary receiver under RCW
16 48.31.130. If a domiciliary liquidator is appointed in a nonreciprocal
17 state while a liquidation is proceeding under this section, the
18 liquidator under this section may petition the court for permission to
19 act as ancillary receiver under RCW 48.31.130.

20 (5) On the same grounds as are specified in subsection (1) of this
21 section, the commissioner may petition an appropriate federal court to
22 be appointed receiver to liquidate that portion of the insurer's assets
23 and business over which the court will exercise jurisdiction, or any
24 lesser part thereof that the commissioner deems desirable for the
25 protection of policyholders, creditors, and the public in this state.

26 (6) The court may order the commissioner, when he or she has
27 liquidated the assets of a foreign or alien insurer under this section,
28 to pay claims of residents of this state against the insurer under
29 those rules on the liquidation of insurers under this chapter that are
30 otherwise compatible with the provisions of this section."

1 "NEW SECTION. Sec. 68. (1) Except as to special deposits and
2 security on secured claims under RCW 48.31.130(2), the domiciliary
3 liquidator of an insurer domiciled in a reciprocal state shall be
4 vested by operation of law with the title to all of the assets,
5 property, contracts, and rights of action, agents' balances, and all
6 the books, accounts, and other records of the insurer located in this
7 state. The date of vesting is the date of the filing of the petition,
8 if that date is specified by the domiciliary law for the vesting of
9 property in the domiciliary state. Otherwise, the date of vesting is
10 the date of entry of the order directing possession to be taken. The
11 domiciliary liquidator has the immediate right to recover balances due
12 from agents and to obtain possession of the books, accounts, and other
13 records of the insurer located in this state. The domiciliary
14 liquidator also has the right to recover all other assets of the
15 insurer located in this state, subject to RCW 48.31.130.

16 (2) If a domiciliary liquidator is appointed for an insurer not
17 domiciled in a reciprocal state, the commissioner of this state is
18 vested by operation of law with the title to all of the property,
19 contracts, and rights of action, and all the books, accounts, and other
20 records of the insurer located in this state, at the same time that the
21 domiciliary liquidator is vested with title in the domicile. The
22 commissioner of this state may petition for a conservation or
23 liquidation order under RCW 48.31.100 or 48.31.130, or for an ancillary
24 receivership under RCW 48.31.130, or after approval by the court may
25 transfer title to the domiciliary liquidator, as the interests of
26 justice and the equitable distribution of the assets require.

27 (3) Claimants residing in this state may file claims with the
28 liquidator or ancillary receiver, if any, in this state or with the
29 domiciliary liquidator, if the domiciliary law permits. The claims

1 must be filed on or before the last date fixed for the filing of claims
2 in the domiciliary liquidation proceedings."

3 "NEW SECTION. Sec. 69. The commissioner in his or her sole
4 discretion may institute proceedings under section 58 of this act at
5 the request of the commissioner or other appropriate insurance official
6 of the domiciliary state of a foreign or alien insurer having property
7 located in this state."

8 "NEW SECTION. Sec. 70. (1) In a liquidation proceeding in this
9 state involving one or more reciprocal states, the order of
10 distribution of the domiciliary state controls as to claims of
11 residents of this and reciprocal states. Claims of residents of
12 reciprocal states shall be given equal priority of payment from general
13 assets regardless of where the assets are located.

14 (2) The owners of special deposit claims against an insurer for
15 which a liquidator is appointed in this or any other state shall be
16 given priority against the special deposits in accordance with the
17 statutes governing the creation and maintenance of the deposits. If
18 there is a deficiency in a deposit, so that the claims secured by it
19 are not fully discharged from it, the claimants may share in the
20 general assets, but the sharing shall be deferred until general
21 creditors, and also claimants against other special deposits who have
22 received smaller percentages from their respective special deposits,
23 have been paid percentages of their claims equal to the percentage paid
24 from the special deposit.

25 (3) The owner of a secured claim against an insurer for which a
26 liquidator has been appointed in this or another state may surrender
27 his or her security and file his or her claim as a general creditor, or
28 the claim may be discharged by resort to the security, in which case

1 the deficiency, if any, shall be treated as a claim against the general
2 assets of the insurer on the same basis as claims of unsecured
3 creditors."

4 "NEW SECTION. Sec. 71. If an ancillary receiver in another
5 state or foreign country, whether called by that name or not, fails to
6 transfer to the domiciliary liquidator in this state assets within his
7 or her control other than special deposits, diminished only by the
8 expenses of the ancillary receivership, if any, then the claims filed
9 in the ancillary receivership, other than special deposit claims or
10 secured claims, shall be placed in the class of claims under RCW
11 48.31.280(7)."

12 **"Sec. 72.** RCW 48.31.030 and 1949 c 190 s 28 are each amended to
13 read as follows:

14 The commissioner may apply for an order directing him or her to
15 rehabilitate a domestic insurer upon one or more of the following
16 grounds: That the insurer

17 (1) Is insolvent; or

18 (2) Has refused to submit its books, records, accounts or affairs
19 to the reasonable examination of the commissioner; or

20 (3) Has failed to comply with the commissioner's order, made
21 pursuant to law, to make good an impairment of capital (if a stock
22 insurer) or an impairment of assets (if a mutual or reciprocal insurer)
23 within the time prescribed by law; or

24 (4) Has transferred or attempted to transfer substantially its
25 entire property or business, or has entered into any transaction the
26 effect of which is to merge substantially its entire property or
27 business in that of any other insurer without first having obtained the
28 written approval of the commissioner; or

1 (5) Is found, after examination, to be in such condition that its
2 further transaction of business will be hazardous to its policyholders,
3 or to its creditors, or to its members, subscribers, or stockholders,
4 or to the public; or

5 (6) Has willfully violated its charter or any law of this state; or

6 (7) Has an officer, director, or manager who has refused to be
7 examined under oath, concerning its affairs, for which purpose the
8 commissioner is authorized to conduct and to enforce by all appropriate
9 and available means any such examination under oath in any other state
10 or territory of the United States, in which any such officer, director
11 or manager may then presently be, to the full extent permitted by the
12 laws of any such other state or territory, this special authorization
13 considered; or

14 (8) Has been the subject of an application for the appointment of
15 a receiver, trustee, custodian or sequestrator of the insurer or of its
16 property, or if a receiver, trustee, custodian, or sequestrator is
17 appointed by a federal court or if such appointment is imminent; or

18 (9) Has consented to such an order through a majority of its
19 directors, stockholders, members, or subscribers; or

20 (10) Has failed to pay a final judgment rendered against it in any
21 state upon any insurance contract issued or assumed by it, within
22 thirty days after the judgment became final or within thirty days after
23 time for taking an appeal has expired, or within thirty days after
24 dismissal of an appeal before final determination, whichever date is
25 the later; or

26 (11) There is reasonable cause to believe that there has been
27 embezzlement from the insurer, wrongful sequestration or diversion of
28 the insurer's assets, forgery or fraud affecting the insurer, or other
29 illegal conduct in, by, or with respect to the insurer that if

1 established would endanger assets in an amount threatening the solvency
2 of the insurer; or

3 (12) The insurer has failed to remove any person who in fact has
4 executive authority in the insurer, whether an officer, manager,
5 general agent, employee, or other person, if the person has been found
6 after notice and hearing by the commissioner to be dishonest or
7 untrustworthy in a way affecting the insurer's business; or

8 (13) Control of the insurer, whether by stock ownership or
9 ownership or otherwise, and whether direct or indirect, is in a person
10 or persons found after notice and hearing to be untrustworthy; or

11 (14) The insurer has failed to file its annual report or other
12 financial report required by statute within the time allowed by law
13 and, after written demand by the commissioner, has failed to give an
14 adequate explanation immediately; or

15 (15) The board of directors or the holders of a majority of the
16 shares entitled to vote, request, or consent to rehabilitation under
17 this chapter."

18 **"Sec. 73.** RCW 48.31.040 and 1947 c 79 s .31.04 are each amended to
19 read as follows:

20 (1) An order to rehabilitate a domestic insurer shall direct the
21 commissioner forthwith to take possession of the property of the
22 insurer and to conduct the business thereof, and to take such steps
23 toward removal of the causes and conditions which have made
24 rehabilitation necessary as the court may direct.

25 (2) If at any time the commissioner deems that further efforts to
26 rehabilitate the insurer would be useless, he or she may apply to the
27 court for an order of liquidation.

28 (3) The commissioner, or any interested person upon due notice to
29 the commissioner, at any time may apply for an order terminating the

1 rehabilitation proceeding and permitting the insurer to resume
2 possession of its property and the conduct of its business, but no such
3 order shall be granted except when, after a full hearing, the court has
4 determined that the purposes of the proceedings have been fully
5 accomplished.

6 (4) An order to rehabilitate the business of a domestic insurer, or
7 an alien insurer domiciled in this state, shall appoint the
8 commissioner and his or her successors in office as the rehabilitator,
9 and shall direct the rehabilitator forthwith to take possession of the
10 assets of the insurer, and to administer them under the general
11 supervision of the court. The filing or recording of the order with
12 the recorder of deeds of the county in this state in which the
13 principal business of the company is conducted, or the county in this
14 state in which the company's principal office or place of business is
15 located, shall impart the same notice as a deed or other evidence of
16 title duly filed or recorded with that recorder of deeds would have
17 imparted. The order to rehabilitate the insurer by operation of law
18 vests title to all assets of the insurer in the rehabilitator.

19 (5) An order issued under this section requires accountings to the
20 court by the rehabilitator. Accountings shall be at such intervals as
21 the court specifies in its order, but no less frequently than
22 semiannually.

23 (6) Entry of an order of rehabilitation does not constitute an
24 anticipatory breach of any contracts of the insurer nor may it be
25 grounds for retroactive revocation or retroactive cancellation of any
26 contracts of the insurer, unless the revocation or cancellation is done
27 by the rehabilitator."

28 "NEW SECTION. Sec. 74. A new section is added to chapter 48.31
29 RCW to read as follows:

1 (1) A court in this state before which an action or proceeding in
2 which the insurer is a party, or is obligated to defend a party, is
3 pending when a rehabilitation order against the insurer is entered
4 shall stay the action or proceeding for ninety days and such additional
5 time as is necessary for the rehabilitator to obtain proper
6 representation and prepare for further proceedings. The rehabilitator
7 shall take such action respecting the pending litigation as he or she
8 deems necessary in the interests of justice and for the protection of
9 creditors, policyholders, and the public. The rehabilitator shall
10 immediately consider all litigation pending outside this state and
11 shall petition the courts having jurisdiction over that litigation for
12 stays whenever necessary to protect the estate of the insurer.

13 (2) A statute of limitations or defense of laches does not run with
14 respect to an action by or against an insurer between the filing of a
15 petition for appointment of a rehabilitator for that insurer and the
16 order granting or denying that petition. An action against the insurer
17 that might have been commenced when the petition was filed may be
18 commenced for at least sixty days after the order of rehabilitation is
19 entered or the petition is denied. The rehabilitator may, upon an
20 order for rehabilitation, within one year or such other longer time as
21 applicable law may permit, institute an action or proceeding on behalf
22 of the insurer upon a cause of action against which the period of
23 limitation fixed by applicable law has not expired at the time of the
24 filing of the petition upon which the order is entered.

25 (3) A guaranty association or foreign guaranty association covering
26 life or health insurance or annuities has standing to appear in a court
27 proceeding concerning the rehabilitation of a life or health insurer if
28 the association is or may become liable to act as a result of the
29 rehabilitation."

1 **"Sec. 75.** RCW 48.31.280 and 1975-'76 2nd ex.s. c 109 s 1 are each
2 amended to read as follows:

3 ~~((1) Compensation actually owing to employees other than officers~~
4 ~~of an insurer, for services rendered within three months prior to the~~
5 ~~commencement of a proceeding against the insurer under this chapter,~~
6 ~~but not exceeding three hundred dollars for each such employee, shall~~
7 ~~be paid prior to the payment of any other debt or claim, and in the~~
8 ~~discretion of the commissioner may be paid as soon as practicable after~~
9 ~~the proceeding has been commenced; except, that at all times the~~
10 ~~commissioner shall reserve such funds as will in his opinion be~~
11 ~~sufficient for the expenses of administration. Such priority shall be~~
12 ~~in lieu of any other similar priority which may be authorized by law as~~
13 ~~to the wages or compensation of such employees.~~

14 ~~(2) The priorities of distribution in a liquidation proceeding~~
15 ~~shall be in the following order:~~

16 ~~(a) Expenses of administration;~~

17 ~~(b) Compensation of employees as provided in subsection (1) of this~~
18 ~~section;~~

19 ~~(c) Federal, state, and local taxes;~~

20 ~~(d) Claims arising out of and within the coverages of insurance~~
21 ~~policies issued by the insurer being liquidated for losses incurred,~~
22 ~~including:~~

23 ~~(i) Third party claims and claims for unearned premiums;~~

24 ~~(ii) Claims presented by the Washington Insurance Guaranty~~
25 ~~Association which represent "covered claims" as defined in RCW~~
26 ~~48.32.030(4) and which have been paid by such association;~~

27 ~~(iii) Claims to which the Washington life and disability insurance~~
28 ~~guaranty association shall have become subrogated under the provisions~~
29 ~~of RCW 48.32A.060; and~~

1 ~~(iv) Claims similar to those described in parts (ii) and (iii) of~~
2 ~~this subsection as presented by similar guaranty associations of other~~
3 ~~states; and~~

4 ~~(e) All other claims.))~~ The priority of distribution of claims from
5 the insurer's estate are as follows: Every claim in a class shall be
6 paid in full or adequate funds retained for payment before the members
7 of the next class receive any payment; no subclasses may be established
8 within a class; and no claim by a shareholder, policyholder, or other
9 creditor may circumvent the priority classes through the use of
10 equitable remedies. The order of distribution of claims is:

11 (1) Class 1. The costs and expenses of administration during
12 rehabilitation and liquidation, including but not limited to the
13 following:

14 (a) The actual and necessary costs of preserving or recovering the
15 assets of the insurer;

16 (b) Compensation for all authorized services rendered in the
17 rehabilitation and liquidation;

18 (c) Necessary filing fees;

19 (d) The fees and mileage payable to witnesses;

20 (e) Authorized reasonable attorneys' fees and other professional
21 services rendered in the rehabilitation and liquidation;

22 (f) The reasonable expenses of a guaranty association or foreign
23 guaranty association for unallocated loss adjustment expenses.

24 (2) Class 2. Reasonable compensation to employees for services
25 performed to the extent that they do not exceed two months of monetary
26 compensation and represent payment for services performed within one
27 year before the filing of the petition for liquidation or, if
28 rehabilitation preceded liquidation, within one year before the filing
29 of the petition for rehabilitation. Principal officers and directors
30 are not entitled to the benefit of this priority except as otherwise

1 approved by the liquidator and the court. The priority is in lieu of
2 any other similar priority that may be authorized by law as to wages or
3 compensation of employees.

4 (3) Class 3. Loss claims. For purposes of this section, "loss
5 claims" are all claims under policies, including claims of the federal
6 or a state or local government, for losses incurred, including third-
7 party claims and all claims of a guaranty association or foreign
8 guaranty association. All claims under life insurance and annuity
9 policies, whether for death proceeds, annuity proceeds, or investment
10 values, are loss claims. That portion of any loss indemnification for
11 which is provided by other benefits or advantages recovered by the
12 claimant, is not included in this class, other than benefits or
13 advantages recovered or recoverable in discharge of familial obligation
14 of support or by way of succession at death or a proceeds of life
15 insurance, or as gratuities. No payment by an employer to his or her
16 employee shall be treated as a gratuity.

17 (4) Class 4. Claims under nonassessable policies for unearned
18 premium or other premium refunds and claims of general creditors
19 including claims of ceding and assuming companies in their capacity as
20 such.

21 (5) Class 5. Claims of the federal or any state or local
22 government except those under subsection (3) of this section. Claims,
23 including those of any governmental body for a penalty or forfeiture,
24 are allowed in this class only to the extent of the pecuniary loss
25 sustained from the act, transaction, or proceeding out of which the
26 penalty or forfeiture arose, with reasonable and actual costs
27 occasioned thereby. The remainder of such claims are postponed to the
28 class of claims under subsection (8) of this section.

29 (6) Class 6. Claims filed late or any other claims other than
30 claims under subsections (7) and (8) of this section.

1 (7) Class 7. Surplus or contribution notes, or similar
2 obligations, and premium refunds on assessable policies. Payments to
3 members of domestic mutual insurance companies are limited in
4 accordance with law.

5 (8) Class 8. The claims of shareholders or other owners in their
6 capacity as shareholders."

7 **"Sec. 76.** RCW 48.31.290 and 1947 c 79 s .31.29 are each amended to
8 read as follows:

9 (1) In all cases of mutual debts or mutual credits between the
10 insurer and another person in connection with any action or proceeding
11 under this chapter, such credits and debts shall be set off and the
12 balance only shall be allowed or paid, except as provided in subsection
13 (2) of this section.

14 (2) No offset shall be allowed in favor of any such person where
15 (a) the obligation of the insurer to such person would not at the date
16 of the entry of any liquidation order, or otherwise, as provided in RCW
17 48.31.260, entitle him or her to share as a claimant in the assets of
18 the insurer, or (b) the obligation of the insurer to such person was
19 purchased by or transferred to such person with a view of its being
20 used as an offset, or (c) the obligation of such person is to pay an
21 assessment levied against the members of a mutual insurer, or against
22 the subscribers of a reciprocal insurer, or is to pay a balance upon a
23 subscription to the capital stock of a stock insurer.

24 (3) A setoff is allowed for those sums accruing from reinsurance
25 where the contracts were entered into, renewed, or extended with the
26 express written approval of the insurance commissioner of the state of
27 domicile of the now-insolvent insurer, when in the judgment of that
28 commissioner it was necessary to provide reinsurance in order to
29 prevent or mitigate a threatened impairment or insolvency of a

1 domiciliary insurer in connection with the exercise of the
2 commissioner's regulatory responsibilities."

3 "Sec. 77. RCW 48.31.300 and 1947 c 79 s .31.30 are each amended to
4 read as follows:

5 (1) No contingent claim shall share in a distribution of the assets
6 of an insurer which has been adjudicated to be insolvent by an order
7 made pursuant to RCW 48.31.310, except that such claims shall be
8 considered, if properly presented, and may be allowed to share where:

9 (a) Such claim becomes absolute against the insurer on or before
10 the last day fixed for filing of proofs of claim against the assets of
11 such insurer, or

12 (b) There is a surplus and the liquidation is thereafter conducted
13 upon the basis that such insurer is solvent.

14 (2) Where an insurer has been so adjudicated to be insolvent any
15 person who has a cause of action against an insured of such insurer
16 under a liability insurance policy issued by such insurer, shall have
17 the right to file a claim in the liquidation proceeding, regardless of
18 the fact that such claim may be contingent, and such claim may be
19 allowed

20 (a) If it may be reasonably inferred from the proof presented upon
21 such claim that such person would be able to obtain a judgment upon
22 such cause of action against such insured; and

23 (b) If such person shall furnish suitable proof, unless the court
24 for good cause shown shall otherwise direct, that no further valid
25 claims against such insurer arising out of his or her cause of action
26 other than those already presented can be made; and

27 (c) If the total liability of such insurer to all claimants arising
28 out of the same act of its insured shall be no greater than its maximum
29 liability would be were it not in liquidation.

1 No judgment against such an insured taken after the date of the
2 entry of the liquidation order shall be considered in the liquidation
3 proceedings as evidence of liability, or of the amount of damages, and
4 no judgment against an insured taken by default, inquest or by
5 collusion prior to the entry of the liquidation order shall be
6 considered as conclusive evidence in the liquidation proceeding either
7 of the liability of such insured to such person upon such cause of
8 action or of the amount of damages to which such person is therein
9 entitled.

10 (3) No claim of any secured claimant shall be allowed at a sum
11 greater than the difference between the value of the claim without
12 security and the value of the security itself as of the date of the
13 entry of the order of liquidation or such other date set by the court
14 for fixation of rights and liabilities as provided in RCW 48.31.260
15 unless the claimant shall surrender his or her security to the
16 commissioner in which event the claim shall be allowed in the full
17 amount for which it is valued.

18 (4) Whether or not the third party files a claim, the insured may
19 file a claim on his or her own behalf in the liquidation.

20 (5) No claim may be presented under this section if it is or may be
21 covered by a guaranty association or foreign guaranty association."

22 "NEW SECTION. Sec. 78. A new section is added to chapter 48.74
23 RCW to read as follows:

24 (1) Every life insurance company doing business in this state shall
25 annually submit the opinion of a qualified actuary as to whether the
26 reserves and related actuarial items held in support of the policies
27 and contracts specified by the commissioner by regulation are computed
28 appropriately, are based on assumptions which satisfy contractual
29 provisions, are consistent with prior reported amounts, and comply with

1 applicable laws of this state. The commissioner by rule shall define
2 the specifics of this opinion and add any other items deemed to be
3 necessary to its scope.

4 (2)(a) Every life insurance company, except as exempted by rule,
5 shall also include in the opinion required under subsection (1) of this
6 section an opinion as to whether the reserves and related actuarial
7 items held in support of the policies and contracts specified by the
8 commissioner by rule, when considered in light of the assets held by
9 the company with respect to the reserves and related actuarial items,
10 including but not limited to the investment earnings on the assets and
11 the considerations anticipated to be received and retained under the
12 policies and contracts, make adequate provision for the company's
13 obligations under the policies and contracts, including but not limited
14 to the benefits under and expenses associated with the policies and
15 contracts.

16 (b) The commissioner may provide by rule for a transition period
17 for establishing higher reserves that the qualified actuary may deem
18 necessary in order to render the opinion required by this section.

19 (3) Each opinion required under subsection (2) of this section is
20 governed by the following provisions:

21 (a) A memorandum, in form and substance acceptable to the
22 commissioner as specified by rule, shall be prepared to support each
23 actuarial opinion.

24 (b) If the insurance company fails to provide a supporting
25 memorandum at the request of the commissioner within a period specified
26 by regulation or if the commissioner determines that the supporting
27 memorandum provided by the insurance company fails to meet the
28 standards prescribed by the regulations or is otherwise unacceptable to
29 the commissioner, the commissioner may engage a qualified actuary at
30 the expense of the company to review the opinion and the basis for the

1 opinion and prepare such supporting memorandum as is required by the
2 commissioner.

3 (4) Any memorandum in support of the opinion, and any other
4 material provided by the company to the commissioner in connection
5 therewith, shall be kept confidential by the commissioner and shall not
6 be made public and is not subject to subpoena, other than for the
7 purpose of defending an action seeking damages from any person by
8 reason of any action required by this section or by regulations
9 promulgated hereunder. However, the memorandum or other material may
10 otherwise be released by the commissioner (a) with the written consent
11 of the company or (b) to the American academy of actuaries upon request
12 stating that the memorandum or other material is required for the
13 purpose of professional disciplinary proceedings and setting forth
14 procedures satisfactory to the commissioner for preserving the
15 confidentiality of the memorandum or other material. Once any portion
16 of the confidential memorandum is cited by the company in its marketing
17 or is cited before any governmental agency other than a state insurance
18 department or is released by the company to the news media, all
19 portions of the confidential memorandum are no longer confidential.

20 (5) Each opinion required under this section is governed by the
21 following provisions:

22 (a) The opinion shall be submitted with the annual statement
23 reflecting the valuation of the reserve liabilities for each year
24 ending on or after December 31, 1993.

25 (b) The opinion shall apply to all business in force including
26 individual and group disability insurance, in form and substance
27 acceptable to the commissioner as specified by rule.

28 (c) The opinion shall be based on standards adopted by the
29 commissioner, who in setting the standards shall give due regard to the

1 standards established by the actuarial standards board or its
2 successors.

3 (d) In the case of an opinion required to be submitted by a foreign
4 or alien company, the commissioner may accept the opinion filed by that
5 company with the insurance supervisory official of another state if the
6 commissioner determines that the opinion reasonably meets the
7 requirements applicable to a company domiciled in this state.

8 (e) For purposes of this section, "qualified actuary" means a
9 person who meets qualifications set by the commissioner with due regard
10 to the qualifications established for membership in the American
11 academy of actuaries or its successors.

12 (f) Except in cases of fraud or willful misconduct, the qualified
13 actuary is not liable for damages to any person, other than the
14 insurance company and the commissioner, for any act, error, omission,
15 decision, or conduct with respect to the actuary's opinion.

16 (g) Disciplinary action by the commissioner against the company or
17 the qualified actuary shall be defined in rules adopted by the
18 commissioner."

19 **"Sec. 79.** RCW 48.74.030 and 1982 1st ex.s. c 9 s 3 are each
20 amended to read as follows:

21 (1) Except as otherwise provided in subsections (2) and (3) of this
22 section, or in section 83 of this act, the minimum standard for the
23 valuation of all such policies and contracts issued prior to July 10,
24 1982, shall be that provided by the laws in effect immediately prior to
25 such date. Except as otherwise provided in subsections (2) and (3) of
26 this section, or in section 83 of this act, the minimum standard for
27 the valuation of all such policies and contracts issued on or after
28 July 10, 1982, shall be the commissioner's reserve valuation methods
29 defined in RCW 48.74.040 (~~and~~), 48.74.070, and section 83 of this

1 act, three and one-half percent interest, or in the case of life
2 insurance policies and contracts, other than annuity and pure endowment
3 contracts, issued on or after July 16, 1973, four percent interest for
4 such policies issued prior to September 1, 1979, five and one-half
5 percent interest for single premium life insurance policies and four
6 and one-half percent interest for all other such policies issued on and
7 after September 1, 1979, and the following tables:

8 (a) For all ordinary policies of life insurance issued on the
9 standard basis, excluding any disability and accidental death benefits
10 in such policies--the commissioner's 1941 standard ordinary mortality
11 table for such policies issued prior to the operative date of RCW
12 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality
13 table for such policies issued on or after such operative date and
14 prior to the operative date of RCW 48.76.050(4), except that for any
15 category of such policies issued on female risks, all modified net
16 premiums and present values referred to in this chapter may be
17 calculated according to an age not more than six years younger than the
18 actual age of the insured; and for such policies issued on or after the
19 operative date of RCW 48.76.050(4): (i) The commissioner's 1980
20 standard ordinary mortality table; or (ii) at the election of the
21 company for any one or more specified plans of life insurance, the
22 commissioner's 1980 standard ordinary mortality table with ten-year
23 select mortality factors; or (iii) any ordinary mortality table,
24 adopted after 1980 by the National Association of Insurance
25 Commissioners, that is approved by regulation promulgated by the
26 commissioner for use in determining the minimum standard of valuation
27 for such policies.

28 (b) For all industrial life insurance policies issued on the
29 standard basis, excluding any disability and accidental death benefits
30 in such policies--the 1941 standard industrial mortality table for such

1 policies issued prior to the operative date of RCW 48.23.350(5b), and
2 for such policies issued on or after such operative date the
3 commissioner's 1961 standard industrial mortality table or any
4 industrial mortality table, adopted after 1980 by the National
5 Association of Insurance Commissioners, that is approved by rule of the
6 commissioner for use in determining the minimum standard of valuation
7 for such policies.

8 (c) For individual annuity and pure endowment contracts, excluding
9 any disability and accidental death benefits in such policies--the 1937
10 standard annuity mortality table or, at the option of the company, the
11 annuity mortality table for 1949, ultimate, or any modification of
12 either of these tables approved by the commissioner.

13 (d) For group annuity and pure endowment contracts, excluding any
14 disability and accidental death benefits in such policies--the group
15 annuity mortality table for 1951, any modification of such table
16 approved by the commissioner, or, at the option of the company, any of
17 the tables or modifications of (~~table[s]~~) tables specified for
18 individual annuity and pure endowment contracts.

19 (e) For total and permanent disability benefits in or supplementary
20 to ordinary policies or contracts--for policies or contracts issued on
21 or after January 1, 1966, the tables of period 2 disablement rates and
22 the 1930 to 1950 termination rates of the 1952 disability study of the
23 Society of Actuaries, with due regard to the type of benefit or any
24 tables of disablement rates and termination rates, adopted after 1980
25 by the National Association of Insurance Commissioners, that are
26 approved by regulation promulgated by the commissioner for use in
27 determining the minimum standard of valuation for such policies; for
28 policies or contracts issued on or after January 1, 1961, and prior to
29 January 1, 1966, either such tables or, at the option of the company,
30 the class (3) disability table (1926); and for policies issued prior to

1 January 1, 1961, the class (3) disability table (1926). Any such table
2 shall, for active lives, be combined with a mortality table permitted
3 for calculating the reserves for life insurance policies.

4 (f) For accidental death benefits in or supplementary to policies--
5 for policies issued on or after January 1, 1966, the 1959 accidental
6 death benefits table or any accidental death benefits table, adopted
7 after 1980 by the National Association of Insurance Commissioners, that
8 is approved by regulation promulgated by the commissioner for use in
9 determining the minimum standard of valuation for such policies; for
10 policies issued on or after January 1, 1961, and prior to January 1,
11 1966, either such table or, at the option of the company, the
12 intercompany double indemnity mortality table; and for policies issued
13 prior to January 1, 1961, the intercompany double indemnity mortality
14 table. Either table shall be combined with a mortality table permitted
15 for calculating the reserves for life insurance policies.

16 (g) For group life insurance, life insurance issued on the
17 substandard basis and other special benefits--such tables as may be
18 approved by the commissioner.

19 (2) Except as provided in subsection (3) of this section, the
20 minimum standard for the valuation of all individual annuity and pure
21 endowment contracts issued on or after July 10, 1982, and for all
22 annuities and pure endowments purchased on or after such effective date
23 under group annuity and pure endowment contracts, shall be the
24 commissioner's reserve valuation methods defined in RCW 48.74.040 and
25 the following tables and interest rates:

26 (a) For individual annuity and pure endowment contracts issued
27 before September 1, 1979, excluding any disability and accidental death
28 benefit in such contracts--the 1971 individual annuity mortality table,
29 or any modification of this table approved by the commissioner, and six
30 percent interest for single premium immediate annuity contracts, and

1 four percent interest for all other individual annuity and pure
2 endowment contracts.

3 (b) For individual single premium immediate annuity contracts
4 issued on or after September 1, 1979, excluding any disability and
5 accidental death benefits in such contracts--the 1971 individual
6 annuity mortality table or any individual annuity mortality table,
7 adopted after 1980 by the National Association of Insurance
8 Commissioners, that is approved by regulation promulgated by the
9 commissioner for use in determining the minimum standard of valuation
10 for such contracts, or any modification of these tables approved by the
11 commissioner, and seven and one-half percent interest.

12 (c) For individual annuity and pure endowment contracts issued on
13 or after September 1, 1979, other than single premium immediate annuity
14 contracts, excluding any disability and accidental death benefits in
15 such contracts--the 1971 individual annuity mortality table or any
16 individual annuity mortality table, adopted after 1980 by the National
17 Association of Insurance Commissioners, that is approved by regulation
18 promulgated by the commissioner for use in determining the minimum
19 standard of valuation for such contracts, or any modification of these
20 tables approved by the commissioner, and five and one-half percent
21 interest for single premium deferred annuity and pure endowment
22 contracts and four and one-half percent interest for all other such
23 individual annuity and pure endowment contracts.

24 (d) For all annuities and pure endowments purchased prior to
25 September 1, 1979, under group annuity and pure endowment contracts,
26 excluding any disability and accidental death benefits purchased under
27 such contracts--the 1971 group annuity mortality table, or any
28 modification of this table approved by the commissioner, and six
29 percent interest.

1 (e) For all annuities and pure endowments purchased on or after
2 September 1, 1979, under group annuity and pure endowment contracts,
3 excluding any disability and accidental death benefits purchased under
4 such contracts--the 1971 group annuity mortality table or any group
5 annuity mortality table, adopted after 1980 by the National Association
6 of Insurance Commissioners, that is approved by regulation promulgated
7 by the commissioner for use in determining the minimum standard of
8 valuation for such annuities and pure endowments, or any modification
9 of these tables approved by the commissioner, and seven and one-half
10 percent interest.

11 After July 16, 1973, any company may file with the commissioner a
12 written notice of its election to comply with the provisions of this
13 section after a specified date before January 1, 1979, which shall be
14 the operative date of this section for such company: PROVIDED, That
15 (~~a company may elect a different operative date for individual annuity~~
16 ~~and pure endowment contracts from that elected for group annuity and~~
17 ~~pure endowment contracts.)) if a company makes no such election, the
18 operative date of this section for such company shall be January 1,
19 1979.~~

20 (3)(a) The interest rates used in determining the minimum standard
21 for the valuation of:

22 (i) All life insurance policies issued in a particular calendar
23 year, on or after the operative date of RCW 48.76.050(4);

24 (ii) All individual annuity and pure endowment contracts issued in
25 a particular calendar year on or after January 1, 1982;

26 (iii) All annuities and pure endowments purchased in a particular
27 calendar year on or after January 1, 1982, under group annuity and pure
28 endowment contracts; and

29 (iv) The net increase, if any, in a particular calendar year after
30 January 1, 1982, in amounts held under guaranteed interest contracts

1 shall be the calendar year statutory valuation interest rates as
2 defined in this section.

3 (b) The calendar year statutory valuation interest rates, I, shall
4 be determined as follows and the results rounded to the nearer one-
5 quarter of one percent:

6 (i) For life insurance:

$$7 \quad I = .03 + W \{R - .03\} + W/2 \{R - .09\};$$

8 (ii) For single premium immediate annuities and for annuity
9 benefits involving life contingencies arising from other annuities with
10 cash settlement options and from guaranteed interest contracts with
11 cash settlement options:

$$12 \quad I = .03 + W (R - .03)$$

13 where \bar{R} is the lesser of R and .09,

14 \underline{R} is the greater of R and .09,

15 R is the reference interest rate defined in this section, and

16 W is the weighting factor defined in this section;

17 (iii) For other annuities with cash settlement options and
18 guaranteed interest contracts with cash settlement options, valued on
19 an issue year basis, except as stated in (ii) of this subparagraph, the
20 formula for life insurance stated in (i) of this subparagraph shall
21 apply to annuities and guaranteed interest contracts with guarantee
22 durations in excess of ten years and the formula for single premium
23 immediate annuities stated in (ii) of this subparagraph shall apply to
24 annuities and guaranteed interest contracts with guarantee duration of
25 ten years or less;

26 (iv) For other annuities with no cash settlement options and for
27 guaranteed interest contracts with no cash settlement options, the
28 formula for single premium immediate annuities stated in (ii) of this
29 subparagraph shall apply;

1 (v) For other annuities with cash settlement options and guaranteed
2 interest contracts with cash settlement options, valued on a change in
3 fund basis, the formula for single premium immediate annuities stated
4 in (ii) of this subparagraph shall apply.

5 (c) However, if the calendar year statutory valuation interest rate
6 for any life insurance policies issued in any calendar year determined
7 without reference to this sentence differs from the corresponding
8 actual rate for similar policies issued in the immediately preceding
9 calendar year by less than one-half of one percent, the calendar year
10 statutory valuation interest rate for such life insurance policies
11 shall be equal to the corresponding actual rate for the immediately
12 preceding calendar year. For purposes of applying the immediately
13 preceding sentence, the calendar year statutory valuation interest rate
14 for life insurance policies issued in a calendar year shall be
15 determined for 1983 using the reference interest rate defined for 1982
16 and shall be determined for each subsequent calendar year regardless of
17 when RCW 48.76.050(4) becomes operative.

18 (d) The weighting factors referred to in the formulas stated in
19 subparagraph (b) of this subsection are given in the following tables:

20 (i) Weighting Factors for Life Insurance:

21 Guarantee Duration	Weighting
22 (Years)	Factors
23 10 or less	.50
24 More than 10, but not more than 20	.45
25 More than 20	.35

26 For life insurance, the guarantee duration is the maximum number of
27 years the life insurance can remain in force on a basis guaranteed in
28 the policy or under options to convert to plans of life insurance with

1 premium rates or nonforfeiture values or both which are guaranteed in
2 the original policy;

3 (ii) Weighting factor for single premium immediate annuities and
4 for annuity benefits involving life contingencies arising from other
5 annuities with cash settlement options and guaranteed interest
6 contracts with cash settlement options: .80;

7 (iii) Weighting factors for other annuities and for guaranteed
8 interest contracts, except as stated in (ii) of this subparagraph,
9 shall be as specified in (d)(iii) (A), (B), and (C) of this subsection,
10 according to the rules and definitions in (d)(iii) (D), (E), and (F) of
11 this subsection:

12 (A) For annuities and guaranteed interest contracts valued on an
13 issue year basis:

14 Guarantee Duration	15 Weighting Factor		
	16 for Plan Type		
17 (Years)	A	B	C
18 5 or less:	.80	.60	.50
19 More than 5, but not more than 10:	.75	.60	.50
20 More than 10, but not more than 20:	.65	.50	.45
21 More than 20:	.45	.35	.35

22 (B) For annuities and guaranteed interest contracts valued on a
23 change in fund basis, the factors shown in (d)(iii) (A) of this
subsection increased by:

	Plan Type		
	A	B	C
	.15	.25	.05

(C) For annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in (d)(iii) (A) of this subsection or derived in (d)(iii) (B) of this subsection increased by:

	Plan Type		
	A	B	C
	.05	.05	.05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

1 (E) Plan type as used in the tables in (d)(iii) (A), (B), and (C)
2 of this subsection is defined as follows:

3 Plan Type A: At any time a policyholder may withdraw funds only:
4 (1) With an adjustment to reflect changes in interest rates or asset
5 values since receipt of the funds by the insurance company; or (2)
6 without such adjustment but in installments over five years or more; or
7 (3) as an immediate life annuity; or (4) no withdrawal permitted.

8 Plan Type B: Before expiration of the interest rate guarantee, a
9 policyholder may withdraw funds only: (1) With adjustment to reflect
10 changes in interest rates or asset values since receipt of the funds by
11 the insurance company; or (2) without such adjustment but in
12 installments over five years or more; or (3) no withdrawal permitted.
13 At the end of the interest rate guarantee, funds may be withdrawn
14 without such adjustment in a single sum or installments over less than
15 five years.

16 Plan Type C: A policyholder may withdraw funds before expiration
17 of the interest rate guarantee in a single sum or installments over
18 less than five years either: (1) Without adjustment to reflect changes
19 in interest rates or asset values since receipt of the funds by the
20 insurance company; or (2) subject only to a fixed surrender charge
21 stipulated in the contract as a percentage of the fund.

22 (F) A company may elect to value guaranteed interest contracts with
23 cash settlement options and annuities with cash settlement options on
24 either an issue year basis or on a change in fund basis. Guaranteed
25 interest contracts with no cash settlement options and other annuities
26 with no cash settlement options must be valued on an issue year basis.
27 As used in this section, an issue year basis of valuation refers to a
28 valuation basis under which the interest rate used to determine the
29 minimum valuation standard for the entire duration of the annuity or
30 guaranteed interest contract is the calendar year valuation interest

1 rate for the year of issue or year of purchase of the annuity or
2 guaranteed interest contract. The change in fund basis of valuation
3 refers to a valuation basis under which the interest rate used to
4 determine the minimum valuation standard applicable to each change in
5 the fund held under the annuity or guaranteed interest contract is the
6 calendar year valuation interest rate for the year of the change in the
7 fund.

8 (e) The reference interest rate referred to in subparagraphs (b)
9 and (c) of this subsection is defined as follows:

10 (i) For all life insurance, the lesser of the average over a period
11 of thirty-six months and the average over a period of twelve months,
12 ending on June 30th of the calendar year next preceding the year of
13 issue, of Moody's corporate bond yield average--monthly average
14 corporates, as published by Moody's Investors Service, Inc.

15 (ii) For single premium immediate annuities and for annuity
16 benefits involving life contingencies arising from other annuities with
17 cash settlement options and guaranteed interest contracts with cash
18 settlement options, the average over a period of twelve months, ending
19 on June 30th of the calendar year of issue or year of purchase of
20 Moody's corporate bond yield average--monthly average corporates, as
21 published by Moody's Investors Service, Inc.

22 (iii) For other annuities with cash settlement options and
23 guaranteed interest contracts with cash settlement options, valued on
24 a year of issue basis, except as stated in (ii) of this subparagraph,
25 with guarantee duration in excess of ten years, the lesser of the
26 average over a period of thirty-six months and the average over a
27 period of twelve months, ending on June 30th of the calendar year of
28 issue or purchase, of Moody's corporate bond yield average--monthly
29 average corporates, as published by Moody's Investors Service, Inc.

1 (iv) For other annuities with cash settlement options and
2 guaranteed interest contracts with cash settlement options, valued on
3 a year of issue basis, except as stated in (ii) of this subparagraph,
4 with guarantee duration of ten years or less, the average over a period
5 of twelve months, ending on June 30th of the calendar year of issue or
6 purchase, of Moody's corporate bond yield average--monthly average
7 corporates, as published by Moody's Investors Service, Inc.

8 (v) For other annuities with no cash settlement options and for
9 guaranteed interest contracts with no cash settlement options, the
10 average over a period of twelve months, ending on June 30th of the
11 calendar year of issue or purchase, of Moody's corporate bond yield
12 average--monthly average corporates, as published by Moody's Investors
13 Service, Inc.

14 (vi) For other annuities with cash settlement options and
15 guaranteed interest contracts with cash settlement options, valued on
16 a change in fund basis, except as stated in (ii) of this subparagraph,
17 the average over a period of twelve months, ending on June 30th of the
18 calendar year of the change in the fund, of Moody's corporate bond
19 yield average--monthly average corporates, as published by Moody's
20 Investors Service, Inc.

21 (~~(g)~~) (f) If Moody's corporate bond yield average--monthly
22 average corporates is no longer published by Moody's Investors Service,
23 Inc., or if the National Association of Insurance Commissioners
24 determines that Moody's corporate bond yield average--monthly average
25 corporates as published by Moody's Investors Service, Inc. is no longer
26 appropriate for the determination of the reference interest rate, then
27 an alternative method for determination of the reference interest rate,
28 which is adopted by the National Association of Insurance Commissioners
29 and approved by rule adopted by the commissioner, may be substituted."

1 **"Sec. 80.** RCW 48.74.040 and 1982 1st ex.s. c 9 s 4 are each
2 amended to read as follows:

3 (1) Except as otherwise provided in RCW 48.74.040(2) (~~and~~),
4 48.74.070, and section 83 of this act, reserves according to the
5 commissioner's reserve valuation method, for the life insurance and
6 endowment benefits of policies providing for a uniform amount of
7 insurance and requiring the payment of uniform premiums, shall be the
8 excess, if any, of the present value, at the date of valuation, of such
9 future guaranteed benefits provided for by such policies, over the then
10 present value of any future modified net premiums therefor. The
11 modified net premiums for any such policy shall be such uniform
12 percentage of the respective contract premiums for such benefits that
13 the present value, at the date of issue of the policy, of all such
14 modified net premiums shall be equal to the sum of the then present
15 value of such benefits provided for by the policy and the excess of (a)
16 over (b), as follows:

17 (a) A net level annual premium equal to the present value, at the
18 date of issue, of such benefits provided for after the first policy
19 year, divided by the present value, at the date of issue, of an annuity
20 of one per annum payable on the first and each subsequent anniversary
21 of such policy on which a premium falls due: PROVIDED HOWEVER, That
22 such net level annual premium shall not exceed the net level annual
23 premium on the nineteen year premium whole life plan for insurance of
24 the same amount at an age one year higher than the age at issue of such
25 policy.

26 (b) A net one year term premium for such benefits provided for in
27 the first policy year: PROVIDED, That for any life insurance policy
28 issued on or after January 1, 1986, for which the contract premium in
29 the first policy year exceeds that of the second year and for which no
30 comparable additional benefit is provided in the first year for such

1 excess and which provides an endowment benefit or a cash surrender
2 value or a combination thereof in an amount greater than such excess
3 premium, the reserve according to the commissioner's reserve valuation
4 method as of any policy anniversary occurring on or before the assumed
5 ending date defined herein as the first policy anniversary on which the
6 sum of any endowment benefit and any cash surrender value then
7 available is greater than such excess premium shall, except as
8 otherwise provided in RCW 48.74.070, be the greater of the reserve as
9 of such policy anniversary calculated as described in the preceding
10 paragraph of this subsection and the reserve as of such policy
11 anniversary calculated as described in that paragraph, but with: (i)
12 The value defined in subparagraph (a) of that paragraph being reduced
13 by fifteen percent of the amount of such excess first year premium;
14 (ii) all present values of benefits and premiums being determined
15 without reference to premiums or benefits provided for by the policy
16 after the assumed ending date; (iii) the policy being assumed to mature
17 on such date as an endowment; and (iv) the cash surrender value
18 provided on such date being considered as an endowment benefit. In
19 making the above comparison the mortality and interest bases stated in
20 RCW 48.74.030(1) and (3) shall be used.

21 Reserves according to the commissioner's reserve valuation method
22 for life insurance policies providing for a varying amount of insurance
23 or requiring the payment of varying premiums, group annuity and pure
24 endowment contracts purchased under a retirement plan or plan of
25 deferred compensation established or maintained by an employer,
26 including a partnership or sole proprietorship, or by an employee
27 organization, or by both, other than a plan providing individual
28 retirement accounts or individual retirement annuities under section
29 408 of the Internal Revenue Code, as now or hereafter amended,
30 disability and accidental death benefits in all policies and contracts,

1 and all other benefits, except life insurance and endowment benefits in
2 life insurance policies and benefits provided by all other annuity and
3 pure endowment contracts, shall be calculated by a method consistent
4 with the principles of the preceding paragraphs of this subsection.

5 (2) This section shall apply to all annuity and pure endowment
6 contracts other than group annuity and pure endowment contracts
7 purchased under a retirement plan or plan of deferred compensation,
8 established or maintained by an employer, including a partnership or
9 sole proprietorship, or by an employee organization, or by both, other
10 than a plan providing individual retirement accounts or individual
11 retirement annuities under section 408 of the Internal Revenue Code, as
12 now or hereafter amended.

13 Reserves according to the commissioner's annuity reserve method for
14 benefits under annuity or pure endowment contracts, excluding any
15 disability and accidental death benefits in such contracts, shall be
16 the greatest of the respective excesses of the present values, at the
17 date of valuation, of the future guaranteed benefits, including
18 guaranteed nonforfeiture benefits, provided for by such contracts at
19 the end of each respective contract year, over the present value, at
20 the date of valuation, of any future valuation considerations derived
21 from future gross considerations, required by the terms of such
22 contract, that become payable prior to the end of such respective
23 contract year. The future guaranteed benefits shall be determined by
24 using the mortality table, if any, and the interest rate, or rates,
25 specified in such contracts for determining guaranteed benefits. The
26 valuation considerations are the portions of the respective gross
27 considerations applied under the terms of such contracts to determine
28 nonforfeiture values."

1 **"Sec. 81.** RCW 48.74.050 and 1982 1st ex.s. c 9 s 5 are each
2 amended to read as follows:

3 (1) In no event may a company's aggregate reserves for all life
4 insurance policies, excluding disability and accidental death benefits,
5 issued on or after July 10, 1982, be less than the aggregate reserves
6 calculated in accordance with the methods set forth in RCW 48.74.040,
7 48.74.070, and 48.74.080 and the mortality table or tables and rate or
8 rates of interest used in calculating nonforfeiture benefits for such
9 policies.

10 (2) In no event may the aggregate reserves for all policies,
11 contracts, and benefits be less than the aggregate reserves determined
12 by the qualified actuary to be necessary to render the opinion required
13 under section 78 of this act."

14 **"Sec. 82.** RCW 48.74.060 and 1982 1st ex.s. c 9 s 6 are each
15 amended to read as follows:

16 Reserves for all policies and contracts issued prior to the
17 operative date of this chapter, may be calculated, at the option of the
18 company, according to any standards which produce greater aggregate
19 reserves for all such policies and contracts than the minimum reserves
20 required by the laws in effect immediately prior to such date.

21 Reserves for any category of policies, contracts, or benefits as
22 established by the commissioner, issued on or after July 10, 1982, may
23 be calculated, at the option of the company, according to any standards
24 which produce greater aggregate reserves for such category than those
25 calculated according to the minimum standard herein provided, but the
26 rate or rates of interest used for policies and contracts, other than
27 annuity and pure endowment contracts, shall not be higher than the
28 corresponding rate or rates of interest used in calculating any
29 nonforfeiture benefits provided therein.

1 Any such company which at any time has adopted any standard of
2 valuation producing greater aggregate reserves than those calculated
3 according to the minimum standard herein provided may, with the
4 approval of the commissioner, adopt any lower standard of valuation,
5 but not lower than the minimum herein provided. For the purposes of
6 this section, the holding of additional reserves previously determined
7 by a qualified actuary to be necessary to render the opinion required
8 under section 78 of this act is not to be the adoption of a higher
9 standard of valuation."

10 "NEW SECTION. Sec. 83. A new section is added to chapter 48.74
11 RCW to read as follows:

12 The commissioner shall adopt rules containing the minimum standards
13 applicable to the valuation of disability insurance."

14 "Sec. 84. RCW 48.92.010 and 1987 c 306 s 1 are each amended to
15 read as follows:

16 The purpose of this chapter is to regulate the formation and
17 operation of risk retention groups and purchasing groups in this state
18 formed pursuant to the provisions of the federal Liability Risk
19 Retention Act of 1986."

20 "Sec. 85. RCW 48.92.020 and 1987 c 306 s 2 are each amended to
21 read as follows:

22 As used in this chapter, the following terms have the meanings
23 indicated unless the context clearly requires otherwise:

24 (1) "Commissioner" means the insurance commissioner of Washington
25 state or the commissioner, director, or superintendent of insurance in
26 any other state.

1 (2) "Completed operations liability" means liability arising out of
2 the installation, maintenance, or repair of any product at a site which
3 is not owned or controlled by:

4 (a) Any person who performs that work; or

5 (b) Any person who hires an independent contractor to perform that
6 work; but shall include liability for activities which are completed or
7 abandoned before the date of the occurrence giving rise to the
8 liability.

9 (3) "Domicile," for purposes of determining the state in which a
10 purchasing group is domiciled, means:

11 (a) For a corporation, the state in which the purchasing group is
12 incorporated; and

13 (b) For an unincorporated entity, the state of its principal place
14 of business.

15 (4) "Hazardous financial condition" means that, based on its
16 present or reasonably anticipated financial condition, a risk retention
17 group, although not yet financially impaired or insolvent, is unlikely
18 to be able:

19 (a) To meet obligations to policyholders with respect to known
20 claims and reasonably anticipated claims; or

21 (b) To pay other obligations in the normal course of business.

22 (5) "Insurance" means primary insurance, excess insurance,
23 reinsurance, surplus lines insurance, and any other arrangement for
24 shifting and distributing risk which is determined to be insurance
25 under the laws of this state.

26 (6) "Liability" means legal liability for damages including costs
27 of defense, legal costs and fees, and other claims expenses because of
28 injuries to other persons, damage to their property, or other damage or
29 loss to such other persons resulting from or arising out of:

1 (a) Any business, whether profit or nonprofit, trade, product,
2 services, including professional services, premises, or operations; or

3 (b) Any activity of any state or local government, or any agency or
4 political subdivision thereof.

5 "Liability" does not include personal risk liability and an
6 employer's liability with respect to its employees other than legal
7 liability under the federal Employers' Liability Act 45 U.S.C. 51 et
8 seq.

9 (7) "Personal risk liability" means liability for damages because
10 of injury to any person, damage to property, or other loss or damage
11 resulting from any personal, familial, or household responsibilities or
12 activities, rather than from responsibilities or activities referred to
13 in subsection (6) of this section.

14 (8) "Plan of operation or a feasibility study" means an analysis
15 which presents the expected activities and results of a risk retention
16 group including, at a minimum:

17 (a) Information sufficient to verify that its members are engaged
18 in businesses or activities similar or related with respect to the
19 liability to which the members are exposed by virtue of any related,
20 similar, or common business, trade, product, services, premises, or
21 operations;

22 (b) For each state in which it intends to operate, the coverages,
23 deductibles, coverage limits, rates, and rating classification systems
24 for each line of insurance the group intends to offer;

25 ~~((b))~~ (c) Historical and expected loss experience of the proposed
26 members and national experience of similar exposures;

27 ~~((e))~~ (d) Pro forma financial statements and projections;

28 ~~((d))~~ (e) Appropriate opinions by a qualified, independent,
29 casualty actuary, including a determination of minimum premium or

1 participation levels required to commence operations and to prevent a
2 hazardous financial condition;

3 ~~((e))~~ (f) Identification of management, underwriting and claims
4 procedures, marketing methods, managerial oversight methods, ((and))
5 investment policies, and reinsurance agreements; ((and

6 ~~(f))~~ (g) Identification of each state in which the risk retention
7 group has obtained, or sought to obtain, a charter and license, and a
8 description of its status in each of those states; and

9 (h) Such other matters as may be prescribed by the commissioner for
10 liability insurance companies authorized by the insurance laws of the
11 state.

12 (9) "Product liability" means liability for damages because of any
13 personal injury, death, emotional harm, consequential economic damage,
14 or property damage including damages resulting from the loss of use of
15 property arising out of the manufacture, design, importation,
16 distribution, packaging, labeling, lease, or sale of a product, but
17 does not include the liability of any person for those damages if the
18 product involved was in the possession of such a person when the
19 incident giving rise to the claim occurred.

20 (10) "Purchasing group" means any group which:

21 (a) Has as one of its purposes the purchase of liability insurance
22 on a group basis;

23 (b) Purchases the insurance only for its group members and only to
24 cover their similar or related liability exposure, as described in (c)
25 of this subsection;

26 (c) Is composed of members whose businesses or activities are
27 similar or related with respect to the liability to which members are
28 exposed by virtue of any related, similar, or common business, trade,
29 product, services, premises, or operations; and

30 (d) Is domiciled in any state.

1 (11) "Risk retention group" means any corporation or other limited
2 liability association (~~((formed under the laws of any state, Bermuda, or~~
3 ~~the Cayman Islands))~~):

4 (a) Whose primary activity consists of assuming and spreading all,
5 or any portion, of the liability exposure of its group members;

6 (b) Which is organized for the primary purpose of conducting the
7 activity described under (a) of this subsection;

8 (c) Which:

9 (i) Is chartered and licensed as a liability insurance company and
10 authorized to engage in the business of insurance under the laws of any
11 state; or

12 (ii) Before January 1, 1985, was chartered or licensed and
13 authorized to engage in the business of insurance under the laws of
14 Bermuda or the Cayman Islands and, before such date, had certified to
15 the insurance commissioner of at least one state that it satisfied the
16 capitalization requirements of such state, except that any such group
17 shall be considered to be a risk retention group only if it has been
18 engaged in business continuously since that date and only for the
19 purpose of continuing to provide insurance to cover product liability
20 or completed operations liability as the terms were defined in the
21 federal Product Liability Risk Retention Act of 1981 before the date of
22 the enactment of the federal Risk Retention Act of 1986;

23 (d) Which does not exclude any person from membership in the group
24 solely to provide for members of such a group a competitive advantage
25 over such a person;

26 (e) Which:

27 (i) Has as its ~~((members))~~ owners only persons who ~~((have an~~
28 ~~ownership interest in the group and which has as its owners only~~
29 ~~persons who are members))~~ comprise the membership of the risk retention
30 group and who are provided insurance by the risk retention group; or

1 (ii) Has as its sole (~~member and sole~~) owner an organization
2 (~~which is owned by persons who are provided insurance by the risk~~
3 ~~retention group~~) that has:

4 (A) As its members only persons who comprise the membership of the
5 risk retention group; and

6 (B) As its owners only persons who comprise the membership of the
7 risk retention group and who are provided insurance by the group;

8 (f) Whose members are engaged in businesses or activities similar
9 or related with respect to the liability of which such members are
10 exposed by virtue of any related, similar, or common business trade,
11 product, services, premises, or operations;

12 (g) Whose activities do not include the provision of insurance
13 other than:

14 (i) Liability insurance for assuming and spreading all or any
15 portion of the liability of its group members; and

16 (ii) Reinsurance with respect to the liability of any other risk
17 retention group or any members of such other group which is engaged in
18 businesses or activities so that the group or member meets the
19 requirement described in (f) of this subsection from membership in the
20 risk retention group which provides such reinsurance; and

21 (h) The name of which includes the phrase "risk retention group."

22 (12) "State" means any state of the United States or the District
23 of Columbia."

24 "**Sec. 86.** RCW 48.92.030 and 1987 c 306 s 3 are each amended to
25 read as follows:

26 (1) A risk retention group seeking to be chartered in this state
27 must be chartered and licensed as a liability insurance company
28 authorized by the insurance laws of this state and, except as provided
29 elsewhere in this chapter, must comply with all of the laws, rules,

1 regulations, and requirements applicable to the insurers chartered and
2 licensed in this state and with RCW 48.92.040 to the extent the
3 requirements are not a limitation on laws, rules, regulations, or
4 requirements of this state.

5 (2) A risk retention group chartered in this state shall file with
6 the department and the national association of insurance commissioners
7 an annual statement in a form prescribed by the national association of
8 insurance commissioners and in diskette form, if required by the
9 commissioner and completed in accordance with its instructions and the
10 national association of insurance commissioners accounting practices
11 and procedures manual.

12 (3) Before it may offer insurance in any state, each risk retention
13 group shall also submit for approval to the insurance commissioner of
14 this state a plan of operation or a feasibility study ((and revisions
15 of the plan or study if the group intends to offer any additional lines
16 of liability insurance)). The risk retention group shall submit an
17 appropriate revision in the event of a subsequent material change in an
18 item of the plan of operation or feasibility study, within ten days of
19 the change. The group may not offer any additional kinds of liability
20 insurance, in this state or in any other state, until a revision of the
21 plan or study is approved by the commissioner.

22 (4) At the time of filing its application for charter, the risk
23 retention group shall provide to the commissioner in summary form the
24 following information: The identity of the initial members of the
25 group; the identify of those individuals who organized the group or who
26 shall provide administrative services or otherwise influence or control
27 the activities of the group; the amount and nature of the initial
28 capitalization; the coverages to be afforded; and the states in which
29 the group intends to operate. Upon receipt of this information, the
30 commissioner shall forward the information to the national association

1 of insurance commissioners. Providing notification to the national
2 association of insurance commissioners is in addition to and is not
3 sufficient to satisfy the requirements of RCW 48.92.040 or this
4 chapter."

5 "Sec. 87. RCW 48.92.040 and 1987 c 306 s 4 are each amended to
6 read as follows:

7 Risk retention groups chartered and licensed in states other than
8 this state and seeking to do business as a risk retention group in this
9 state (~~must observe and abide by~~) shall comply with the laws of this
10 state as follows:

11 (1) Before offering insurance in this state, a risk retention group
12 shall submit to the commissioner on a form prescribed by the national
13 association of insurance commissioners:

14 (a) A statement identifying the state or states in which the risk
15 retention group is chartered and licensed as a liability insurance
16 company, date of chartering, its principal place of business, and any
17 other information including information on its membership, as the
18 commissioner of this state may require to verify that the risk
19 retention group is qualified under RCW 48.92.020(11);

20 (b) A copy of its plan of operations or a feasibility study and
21 revisions of the plan or study submitted to its state of domicile:
22 PROVIDED, HOWEVER, That the provision relating to the submission of a
23 plan of operation or a feasibility study shall not apply with respect
24 to any line or classification of liability insurance which: (i) Was
25 defined in the federal Product Liability Risk Retention Act of 1981
26 before October 27, 1986; and (ii) was offered before that date by any
27 risk retention group which had been chartered and operating for not
28 less than three years before that date; (~~and~~)

1 (c) The risk retention group shall submit a copy of any revision to
2 its plan of operation or feasibility study required under RCW
3 48.92.030(3) at the same time that the revision is submitted to the
4 commissioner of its chartering state; and

5 (d) A statement of registration which designates the commissioner
6 as its agent for the purpose of receiving service of legal documents or
7 process.

8 (2) Any risk retention group doing business in this state shall
9 submit to the commissioner:

10 (a) A copy of the group's financial statement submitted to its
11 state of domicile, which shall be certified by an independent public
12 accountant and contain a statement of opinion on loss and loss
13 adjustment expense reserves made by a member of the American academy of
14 actuaries or a qualified loss reserve specialist under criteria
15 established by the national association of insurance commissioners;

16 (b) A copy of each examination of the risk retention group as
17 certified by the commissioner or public official conducting the
18 examination;

19 (c) Upon request by the commissioner, a copy of any information or
20 document pertaining to any outside audit performed with respect to the
21 risk retention group; and

22 (d) Any information as may be required to verify its continuing
23 qualification as a risk retention group under RCW 48.92.020(11).

24 (3)(a) (~~All premiums paid for coverages within this state to risk~~
25 ~~retention groups shall be subject to taxation at the same rate and~~
26 ~~subject to the same interest, fines, and penalties for nonpayment as~~
27 ~~that applicable to foreign admitted insurers)) A risk retention group
28 is liable for the payment of premium taxes and taxes on premiums of
29 direct business for risks resident or located within this state, and
30 shall report on or before March 1 of each year to the commissioner the~~

1 direct premiums written for risks resident or located within this
2 state. The risk retention group is subject to taxation, and applicable
3 finances and penalties related thereto, on the same basis as a foreign
4 admitted insurer.

5 (b) To the extent agents or brokers are utilized under RCW
6 48.92.120, they shall report ~~((and pay the taxes for the premiums for~~
7 ~~risks which they))~~ to the commissioner the premiums for direct business
8 for risks resident or located within this state which the licensees
9 have placed with or on behalf of a risk retention group not chartered
10 in this state.

11 (c) To the extent agents or brokers are ~~((not))~~ utilized ~~((or fail~~
12 ~~to pay the tax, each risk retention group shall pay the tax for risks~~
13 ~~insured within the state. Each risk retention group shall report all~~
14 ~~premiums paid to it for risks insured within the state))~~ under RCW
15 48.92.120, an agent or broker shall keep a complete and separate record
16 of all policies procured from each risk retention group. The record is
17 open to examination by the commissioner, as provided in chapter 48.03
18 RCW. These records shall include, for each policy and each kind of
19 insurance provided thereunder, the following:

- 20 (i) The limit of liability;
- 21 (ii) The time period covered;
- 22 (iii) The effective date;
- 23 (iv) The name of the risk retention group which issued the policy;
- 24 (v) The gross premium charged; and
- 25 (vi) The amount of return premiums, if any.

26 (4) Any risk retention group, its agents and representatives, shall
27 be subject to any and all unfair claims settlement practices statutes
28 and regulations specifically denominated by the commissioner as unfair
29 claims settlement practices regulations.

1 (5) Any risk retention group, its agents and representatives, shall
2 be subject to the provisions of chapter 48.30 RCW pertaining to
3 deceptive, false, or fraudulent acts or practices. However, if the
4 commissioner seeks an injunction regarding such conduct, the injunction
5 must be obtained from a court of competent jurisdiction.

6 (6) Any risk retention group must submit to an examination by the
7 commissioner to determine its financial condition if the commissioner
8 of the jurisdiction in which the group is chartered has not initiated
9 an examination or does not initiate an examination within sixty days
10 after a request by the commissioner of this state. The examination
11 shall be coordinated to avoid unjustified repetition and conducted in
12 an expeditious manner and in accordance with the national association
13 of insurance commissioners' examiner handbook.

14 (7) ~~((Any))~~ Every application form for insurance from a risk
15 retention group and every policy issued by a risk retention group shall
16 contain in ten-point type on the front page and the declaration page,
17 the following notice:

18 NOTICE

19 This policy is issued by your risk retention group. Your risk
20 retention group may not be subject to all of the insurance laws
21 and regulations of your state. State insurance insolvency
22 guaranty funds are not available for your risk retention group.

23 (8) The following acts by a risk retention group are hereby
24 prohibited:

25 (a) The solicitation or sale of insurance by a risk retention group
26 to any person who is not eligible for membership in that group; and

1 (b) The solicitation or sale of insurance by, or operation of, a
2 risk retention group that is in a hazardous financial condition or is
3 financially impaired.

4 (9) No risk retention group shall be allowed to do business in this
5 state if an insurance company is directly or indirectly a member or
6 owner of the risk retention group, other than in the case of a risk
7 retention group all of whose members are insurance companies.

8 (10) (~~No risk retention group may offer insurance policy coverage~~
9 ~~prohibited by Title 48 RCW or declared unlawful by the highest court of~~
10 ~~this state~~) The terms of any insurance policy issued by any risk
11 retention group shall not provide, or be construed to provide, coverage
12 prohibited generally by statute of this state or declared unlawful by
13 the highest court of this state whose law applies to the policy.

14 (11) A risk retention group not chartered in this state and doing
15 business in this state shall comply with a lawful order issued in a
16 voluntary dissolution proceeding or in a delinquency proceeding
17 commenced by a state insurance commissioner if there has been a finding
18 of financial impairment after an examination under ((RCW 48.92.040))
19 subsection (6) of this section."

20 "Sec. 88. RCW 48.92.050 and 1987 c 306 s 5 are each amended to
21 read as follows:

22 (1) No risk retention group shall be permitted to join or
23 contribute financially to any insurance insolvency guaranty fund, or
24 similar mechanism, in this state, nor shall any risk retention group,
25 or its insureds or claimants against its insureds, receive any benefit
26 from any such fund for claims arising ((out of the operations of the))
27 under the insurance policies issued by a risk retention group.

1 (2) A risk retention group shall participate in this state's joint
2 underwriting associations and mandatory liability pools or plans
3 required by the commissioners.

4 (3) When a purchasing group obtains insurance covering its members'
5 risks from an insurer not authorized in this state or a risk retention
6 group, no such risks, wherever resident or located, are covered by any
7 insurance guaranty fund or similar mechanism in this state.

8 (4) When a purchasing group obtains insurance covering its members'
9 risks from an authorized insurer, only risks resident or located in
10 this state shall be covered by the state guaranty fund established in
11 chapter 48.32 RCW."

12 "Sec. 89. RCW 48.92.070 and 1987 c 306 s 7 are each amended to
13 read as follows:

14 ~~((Any purchasing group meeting the criteria established under the~~
15 ~~provisions of the federal Liability Risk Retention Act of 1986 shall be~~
16 ~~exempt from any law of this state relating to the creation of groups~~
17 ~~for the purchase of insurance, prohibition of group purchasing, or any~~
18 ~~law that would discriminate against a purchasing group or its members.~~
19 ~~In addition, an insurer shall be exempt from any law of this state~~
20 ~~which prohibits providing, or offering to provide, to a purchasing~~
21 ~~group or its members advantages based on their loss and expense~~
22 ~~experience not afforded to other persons with respect to rates, policy~~
23 ~~forms, coverages, or other matters. A purchasing group shall be~~
24 ~~subject to all other applicable laws of this state.)) A purchasing~~
25 ~~group and its insurer or insurers are subject to all applicable laws of~~
26 ~~this state, except that a purchasing group and its insurer or insurers~~
27 ~~are exempt, in regard to liability insurance for the purchasing group,~~
28 ~~from any law that:~~

29 (1) Prohibits the establishment of a purchasing group;

1 (2) Makes it unlawful for an insurer to provide or offer to provide
2 insurance on a basis providing, to a purchasing group or its members,
3 advantages based on their loss and expense experience not afforded to
4 other persons with respect to rates, policy forms, coverages, or other
5 matters;

6 (3) Prohibits a purchasing group or its members from purchasing
7 insurance on a group basis described in subsection (2) of this section;

8 (4) Prohibits a purchasing group from obtaining insurance on a
9 group basis because the group has not been in existence for a minimum
10 period of time or because any member has not belonged to the group for
11 a minimum period of time;

12 (5) Requires that a purchasing group must have a minimum number of
13 members, common ownership or affiliation, or certain legal form;

14 (6) Requires that a certain percentage of a purchasing group must
15 obtain insurance on a group basis;

16 (7) Otherwise discriminates against a purchasing group or any of
17 its members."

18 **"Sec. 90.** RCW 48.92.080 and 1987 c 306 s 8 are each amended to
19 read as follows:

20 (1) A purchasing group which intends to do business in this state
21 shall furnish, prior to doing business, notice to the commissioner, on
22 forms prescribed by the national association of insurance commissioners
23 which shall:

24 (a) Identify the state in which the group is domiciled;

25 (b) Identify all other states in which the group intends to do
26 business;

27 (c) Specify the lines and classifications of liability insurance
28 which the purchasing group intends to purchase;

1 ~~((e))~~ (d) Identify the insurance company or companies from which
2 the group intends to purchase its insurance and the domicile of that
3 company or companies;

4 ~~((d))~~ (e) Specify the method by which, and the person or persons,
5 if any, through whom insurance will be offered to its members whose
6 risks are resident or located in this state;

7 (f) Identify the principal place of business of the group; and

8 ~~((e))~~ (g) Provide any other information as may be required by the
9 commissioner to verify that the purchasing group is qualified under RCW
10 48.92.020(10).

11 (2) A purchasing group shall, within ten days, notify the
12 commissioner of any changes in any of the items set forth in subsection
13 (1) of this section.

14 (3) The purchasing group shall register with and designate the
15 commissioner as its agent solely for the purpose of receiving service
16 of legal documents or process, except that this requirement shall not
17 apply in the case of a purchasing group which only purchases insurance
18 that was authorized under the federal Product Liability Risk Retention
19 Act of 1981 and:

20 (a) Which in any state of the United States:

21 (i) Was domiciled before April ~~((2))~~ 1, 1986; and

22 (ii) Is domiciled on and after October 27, 1986(~~(, in any state of~~
23 ~~the United States))~~);

24 (b) Which:

25 (i) Before October 27, 1986, purchased insurance from an insurance
26 carrier licensed in any state;

27 (ii) Since October 27, 1986, purchased its insurance from an
28 insurance carrier licensed in any state; or

1 (c) Which was a purchasing group under the requirements of the
2 federal Product Liability Risk Retention Act of 1981 before October 27,
3 1986(~~;~~ and

4 ~~(d) Which does not purchase insurance that was not authorized for~~
5 ~~purposes of an exemption under that act, as in effect before October~~
6 ~~27, 1986)).~~

7 (4) A purchasing group that is required to give notice under
8 subsection (1) of this section shall also furnish such information as
9 may be required by the commissioner to:

10 (a) Verify that the entity qualifies as a purchasing group;

11 (b) Determine where the purchasing group is located; and

12 (c) Determine appropriate tax treatment."

13 "Sec. 91. RCW 48.92.090 and 1987 c 306 s 9 are each amended to
14 read as follows:

15 (1) A purchasing group may not purchase insurance from a risk
16 retention group that is not chartered in a state or from an insurer not
17 admitted in the state in which the purchasing group is located, unless
18 the purchase is effected through a licensed agent or broker acting
19 pursuant to the surplus lines laws and regulations of that state.

20 (2) A purchasing group which obtains liability insurance from an
21 insurer not admitted in this state or a risk retention group shall
22 inform each of the members of the group which have a risk resident or
23 located in this state that the risk is not protected by an insurance
24 insolvency guaranty fund in this state, and that the risk retention
25 group or insurer may not be subject to all insurance laws and
26 regulations of this state.

27 (3) No purchasing group may purchase insurance providing for a
28 deductible or self-insured retention applicable to the group as a

1 whole; however, coverage may provide for a deductible or self-insured
2 retention applicable to individual members.

3 (4) Purchases of insurance by purchasing groups are subject to the
4 same standards regarding aggregate limits which are applicable to all
5 purchases of group insurance."

6 "NEW SECTION. Sec. 92. A new section is added to chapter 48.92
7 RCW to read as follows:

8 Premium taxes and taxes on premiums paid for coverage of risks
9 resident or located in this state by a purchasing group or any members
10 of the purchasing groups shall be:

11 (1) Imposed at the same rate and subject to the same interest,
12 fines, and penalties as that applicable to premium taxes and taxes on
13 premiums paid for similar coverage from authorized insurers, as defined
14 under chapter 48.05 RCW, or unauthorized insurers, as defined and
15 provided for under chapter 48.15 RCW, by other insurers; and

16 (2) Paid first by the insurance source as defined in subsection (1)
17 of this section, and if not by the source by the purchasing group, and
18 if not by the purchasing group then by the agent or broker for the
19 purchasing group, and if not by the agent or broker for the purchasing
20 group, then by each of the purchasing group's members."

21 "**Sec. 93.** RCW 48.92.100 and 1987 c 306 s 10 are each amended to
22 read as follows:

23 The commissioner is authorized to make use of any of the powers
24 established under Title 48 RCW to enforce the laws of this state so
25 long as those powers are not specifically preempted by the federal
26 Product Liability Risk Retention Act of 1981, as amended by the federal
27 Risk Retention Amendments of 1986. This includes, but is not limited
28 to, the commissioner's administrative authority to investigate, issue

1 subpoenas, conduct depositions and hearings, issue orders, and impose
2 penalties and seek injunctive relief. With regard to any
3 investigation, administrative proceedings, or litigation, the
4 commissioner can rely on the procedural law and regulations of the
5 state. The injunctive authority of the commissioner in regard to risk
6 retention groups is restricted by the requirement that any injunction
7 be issued by a court of competent jurisdiction."

8 "Sec. 94. RCW 48.92.120 and 1987 c 306 s 12 are each amended to
9 read as follows:

10 (~~Any person acting, or offering to act, as an agent or broker for~~
11 ~~a risk retention group or purchasing group, which solicits members,~~
12 ~~sells insurance coverage, purchases coverage for its members located~~
13 ~~within the state or otherwise does business in this state shall be~~
14 ~~subject to the provisions of chapter 48.17 RCW and before commencing~~
15 ~~any such activity, obtain a license and pay the fees designated for the~~
16 ~~license under RCW 48.14.010.)) (1) No person may act or aid in any
17 manner in soliciting, negotiating, or procuring liability insurance in
18 this state from a risk retention group unless the person is licensed as
19 an insurance agent or broker for casualty insurance in accordance with
20 chapter 48.17 RCW and pays the fees designated for the license under
21 RCW 48.14.010.~~

22 (2)(a) No person may act or aid in any manner in soliciting,
23 negotiating, or procuring liability insurance in this state for a
24 purchasing group from an authorized insurer or a risk retention group
25 chartered in a state unless the person is licensed as an insurance
26 agent or broker for casualty insurance in accordance with chapter 48.17
27 RCW and pays the fees designated for the license under RCW 48.14.010.

28 (b) No person may act or aid in any manner in soliciting,
29 negotiating, or procuring liability insurance coverage in this state

1 for a member of a purchasing group under a purchasing group's policy
2 unless the person is licensed as an insurance agent or broker for
3 casualty insurance in accordance with chapter 48.17 RCW and pays the
4 fees designated for the license under RCW 48.14.010.

5 (c) No person may act or aid in any manner in soliciting,
6 negotiating, or procuring liability insurance from an insurer not
7 authorized to do business in this state on behalf of a purchasing group
8 located in this state unless the person is licensed as a surplus lines
9 broker in accordance with chapter 48.15 RCW and pays the fees
10 designated for the license under RCW 48.14.010.

11 (3) For purposes of acting as an agent or broker for a risk
12 retention group or purchasing group under subsections (1) and (2) of
13 this section, the requirement of residence in this state does not
14 apply.

15 (4) Every person licensed under the provisions of chapters 48.15
16 and 48.17 RCW, on business placed with risk retention groups or written
17 through a purchasing group, shall inform each prospective insured of
18 the provisions of the notice required under RCW 48.92.040(7) in the
19 case of a risk retention group and RCW 48.92.090(3) in the case of a
20 purchasing group."

21 **"Sec. 95.** RCW 48.92.130 and 1987 c 306 s 13 are each amended to
22 read as follows:

23 An order issued by any district court of the United States
24 enjoining a risk retention group from soliciting or selling insurance,
25 or operating, in any state or in all states or in any territory or
26 possession of the United States, upon a finding that the group is in a
27 hazardous financial or financially impaired condition, shall be
28 enforceable in the courts of the state."

1 **"Sec. 96.** RCW 48.92.140 and 1987 c 306 s 14 are each amended to
2 read as follows:

3 The commissioner may establish and from time to time amend the
4 rules relating to risk retention or risk purchasing groups as may be
5 necessary or desirable to carry out the provisions of this chapter."

6 "NEW SECTION. **Sec. 97.** The following acts or parts of acts are
7 each repealed:

8 (1) RCW 48.07.090 and 1975 1st ex.s. c 266 s 4, 1953 c 197 s 3, &
9 1947 c 79 s .07.09;

10 (2) RCW 48.31A.005 and 1983 c 46 s 1;

11 (3) RCW 48.31A.010 and 1971 ex.s. c 13 s 3;

12 (4) RCW 48.31A.020 and 1985 c 55 s 1, 1983 c 46 s 2, & 1971 ex.s.
13 c 13 s 4;

14 (5) RCW 48.31A.030 and 1983 c 46 s 3, & 1971 ex.s. c 13 s 5;

15 (6) RCW 48.31A.040 and 1971 ex.s. c 13 s 6;

16 (7) RCW 48.31A.050 and 1985 c 55 s 2, 1983 c 46 s 4, & 1971 ex.s.
17 c 13 s 7;

18 (8) RCW 48.31A.055 and 1985 c 55 s 3;

19 (9) RCW 48.31A.060 and 1971 ex.s. c 13 s 8;

20 (10) RCW 48.31A.070 and 1971 ex.s. c 13 s 9;

21 (11) RCW 48.31A.080 and 1971 ex.s. c 13 s 10;

22 (12) RCW 48.31A.090 and 1971 ex.s. c 13 s 11;

23 (13) RCW 48.31A.100 and 1971 ex.s. c 13 s 12;

24 (14) RCW 48.31A.110 and 1971 ex.s. c 13 s 13;

25 (15) RCW 48.31A.120 and 1971 ex.s. c 13 s 14;

26 (16) RCW 48.31A.130 and 1971 ex.s. c 13 s 15; and

27 (17) RCW 48.31A.900 and 1971 ex.s. c 13 s 17."

1 "NEW SECTION. **Sec. 98.** The insurance commissioner may take such
2 steps as are necessary to ensure that this act is implemented on its
3 effective date."

4 "NEW SECTION. **Sec. 99.** Sections 1 through 14 of this act shall
5 constitute a new chapter in Title 48 RCW."

6 "NEW SECTION. **Sec. 100.** Sections 15 through 20 of this act shall
7 constitute a new chapter in Title 48 RCW."

8 "NEW SECTION. **Sec. 101.** Sections 21 through 32 of this act shall
9 constitute a new chapter in Title 48 RCW."

10 "NEW SECTION. **Sec. 102.** Sections 33 through 41 of this act shall
11 constitute a new chapter in Title 48 RCW."

12 "NEW SECTION. **Sec. 103.** Sections 55 through 71 of this act are
13 each added to chapter 48.31 RCW."

14 "NEW SECTION. **Sec. 104.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected."

18 **SHB 2480** - S COMM AMD
19 By Committee on Financial Insititutions & Insurance

20
21 On page 1, line 5 of the title, after "commissioners;" strike the
22 remainder of the title and insert "amending RCW 48.03.010, 48.03.040,
23 48.03.050, 48.03.060, 48.05.340, 48.11.140, 48.12.180, 48.12.190,

1 48.12.200, 48.14.010, 48.31.030, 48.31.040, 48.31.280, 48.31.290,
2 48.31.300, 48.74.030, 48.74.040, 48.74.050, 48.74.060, 48.92.010,
3 48.92.020, 48.92.030, 48.92.040, 48.92.050, 48.92.070, 48.92.080,
4 48.92.090, 48.92.100, 48.92.120, 48.92.130, and 48.92.140; adding new
5 sections to chapter 48.03 RCW; adding new sections to chapter 48.74
6 RCW; adding a new section to chapter 48.92 RCW; adding new sections to
7 chapter 48.31 RCW; adding new chapters to Title 48 RCW; repealing RCW
8 48.07.090, 48.31A.005, 48.31A.010, 48.31A.020, 48.31A.030, 48.31A.040,
9 48.31A.050, 48.31A.055, 48.31A.060, 48.31A.070, 48.31A.080, 48.31A.090,
10 48.31A.100, 48.31A.110, 48.31A.120, 48.31A.130, and 48.31A.900; and
11 prescribing penalties."