

---

SENATE BILL 5397

---

State of Washington

62nd Legislature

2011 Regular Session

By Senators Benton, Hobbs, and Shin; by request of Insurance Commissioner

Read first time 01/24/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to unauthorized insurance; amending RCW 48.15.040,  
2 48.15.040, 48.15.090, 48.15.110, and 48.15.120; adding new sections to  
3 chapter 48.15 RCW; creating a new section; providing effective dates;  
4 providing an expiration date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.15 RCW  
7 to read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Affiliate" means, with respect to an insured, any entity that  
11 controls, is controlled by, or is under common control with the  
12 insured.

13 (2) "Affiliated group" means any group of entities that are all  
14 affiliated.

15 (3) With respect to an insured, an entity has "control" over  
16 another entity when:

17 (a) The entity directly or indirectly or acting through one or more  
18 other persons owns, controls, or has the power to vote twenty-five

1 percent or more of any class of voting securities of the other entity;  
2 or

3 (b) The entity controls in any manner the election of a majority of  
4 the directors or trustees of the other entity.

5 (4)(a) "Exempt commercial purchaser" means any person purchasing  
6 commercial insurance that, at the time of placement, meets the  
7 following requirements:

8 (i) The person employs or retains a qualified risk manager to  
9 negotiate insurance coverage;

10 (ii) The person has paid aggregate nationwide commercial property  
11 and casualty insurance premiums in excess of one hundred thousand  
12 dollars in the immediately preceding twelve months; and

13 (iii) The person meets at least one of the following criteria:

14 (A) The person possesses a net worth in excess of twenty million  
15 dollars, as the amount is adjusted under (b) of this subsection;

16 (B) The person generates annual revenues in excess of fifty million  
17 dollars, as the amount is adjusted under (b) of this subsection;

18 (C) The person employs more than five hundred full-time or full-  
19 time equivalent employees per insured or is a member of an affiliated  
20 group employing more than one thousand employees in the aggregate;

21 (D) The person is a not-for-profit organization or public entity  
22 generating annual budgeted expenditures of at least thirty million  
23 dollars, as the amount is adjusted under (b) of this subsection; or

24 (E) The person is a municipality with a population in excess of  
25 fifty thousand persons.

26 (b) The amounts in (a)(iii)(A), (B), and (D) of this subsection  
27 must be adjusted to reflect the percentage change for the five-year  
28 period in the consumer price index for all urban consumers published by  
29 the bureau of labor statistics of the United States department of  
30 labor.

31 (c) For the purpose of this subsection, "commercial insurance"  
32 means property and casualty insurance pertaining to a business,  
33 profession, occupation, nonprofit organization, or public entity.

34 (5)(a) Except as provided in (b) of this subsection, "insured's  
35 home state" means, with respect to an insured:

36 (i) The state in which an insured maintains its principal place of  
37 business or, in the case of an individual, the individual's principal  
38 residence; or

1 (ii) If one hundred percent of the insured risk is located out of  
2 the state referred to in this subsection, the state to which the  
3 greatest percentage of the insured's taxable premium for that insurance  
4 contract is allocated.

5 (b) If more than one insured from an affiliated group are named  
6 insureds on a single insurance contract issued by an unauthorized  
7 insurer, the term "insured's home state" means the insured's home  
8 state, as determined pursuant to (a) of this subsection, of the member  
9 of the affiliated group that has the largest percentage of premium  
10 attributed to it under the insurance contract.

11 (c) To determine the home state of the insured, the principal place  
12 of business is the state where the insured maintains its headquarters  
13 and where the insured's high-level officers direct, control, and  
14 coordinate the business activities of the insured.

15 (6) "Qualified risk manager" means, with respect to a policyholder  
16 of commercial insurance, a person who meets all of the following  
17 requirements:

18 (a) The person is an employee of, or third party consultant  
19 retained by, the commercial policyholder;

20 (b) The person provides skilled services in loss prevention, loss  
21 reduction, or risk and insurance coverage analysis, and purchase of  
22 insurance; and

23 (c) The person:

24 (i)(A) Has a bachelor's degree or higher from an accredited college  
25 or university in risk management, business administration, finance,  
26 economics, or any other field determined by the commissioner to  
27 demonstrate minimum competence in risk management; and

28 (B)(I) Has three years of experience in risk financing, claims  
29 administration, loss prevention, risk and insurance analysis, or  
30 purchasing commercial lines of insurance; or

31 (II) Has one of the following designations:

32 (AA) A designation as a chartered property and casualty underwriter  
33 (CPCU) issued by the American institute for CPCU/insurance institute of  
34 America;

35 (BB) A designation as an associate in risk management issued by the  
36 American institute for CPCU/insurance institute of America;

37 (CC) A designation as certified risk manager issued by the national  
38 alliance for insurance education and research;

1 (DD) A designation as a RIMS fellow issued by the global risk  
2 management institute; or

3 (EE) Any other designation, certification, or license determined by  
4 the commissioner to demonstrate minimum competency in risk management;

5 (ii)(A) Has at least seven years of experience in risk financing,  
6 claims administration, loss prevention, risk and insurance coverage  
7 analysis, or purchasing commercial lines of insurance; and

8 (B) Has any one of the designations specified in (c)(i)(B)(II)(AA)  
9 through (EE) of this subsection;

10 (iii) Has at least ten years of experience in risk financing,  
11 claims administration, loss prevention, risk and insurance coverage  
12 analysis, or purchasing commercial lines of insurance; or

13 (iv) Has a graduate degree from an accredited college or university  
14 in risk management, business administration, finance, economics, or any  
15 other field determined by the commissioner to demonstrate minimum  
16 competence in risk management.

17 **Sec. 2.** RCW 48.15.040 and 2010 c 230 s 17 are each amended to read  
18 as follows:

19 If certain insurance coverages cannot be procured from authorized  
20 insurers, such coverages, hereinafter designated as "surplus lines,"  
21 may be procured from unauthorized insurers subject to the following  
22 conditions:

23 (1) The insurance must be procured through a licensed surplus line  
24 broker under this chapter. If the insurance is property and casualty  
25 insurance, except industrial insurance under Title 51 RCW, then the  
26 insurance must be procured under the laws and rules of the insured's  
27 home state.

28 (2) The insurance must not be procurable, after diligent effort has  
29 been made to do so from among a majority of the insurers authorized to  
30 transact that kind of insurance in this state.

31 (3) Coverage shall not be procured from an unauthorized insurer for  
32 the purpose of securing a lower premium rate than would be accepted by  
33 any authorized insurer nor to secure any other competitive advantage.

34 (4) The commissioner may by regulation establish the degree of  
35 effort required to comply with subsections (2) and (3) of this section.

36 (5) At the time of ~~((the))~~ procuring ~~((of any such))~~ the insurance  
37 ~~((an affidavit setting forth))~~ the surplus line broker must certify to

1 the accuracy of the facts ((referred to)) supporting the surplus line  
2 broker's diligent effort required in subsections (2) and (3) of this  
3 section ~~((must be executed by the surplus line broker. Such affidavit~~  
4 ~~shall)).~~

5 (a) The certification must set forth the facts supporting the  
6 surplus line broker's diligent effort.

7 (b) The certification must state that under the penalty of  
8 suspension or revocation of the surplus line broker's license the facts  
9 contained in the certification are true and correct.

10 (c) The certification may be in electronic, digital, or another  
11 format as designated by the commissioner.

12 (d) The certification must be filed with the commissioner within  
13 ~~((thirty))~~ sixty days after the insurance is procured.

14 (6) For purposes of chapter 48.164 RCW, a joint underwriting  
15 association established or authorized by the legislature is not an  
16 authorized insurer.

17 **Sec. 3.** RCW 48.15.040 and 1983 1st ex.s. c 32 s 4 are each amended  
18 to read as follows:

19 If certain insurance coverages cannot be procured from authorized  
20 insurers, such coverages, hereinafter designated as "surplus lines,"  
21 may be procured from unauthorized insurers subject to the following  
22 conditions:

23 (1) The insurance must be procured through a licensed surplus line  
24 broker under this chapter. If the insurance is property and casualty  
25 insurance, except industrial insurance under Title 51 RCW, then the  
26 insurance must be procured under the laws and rules of the insured's  
27 home state.

28 (2) The insurance must not be procurable, after diligent effort has  
29 been made to do so from among a majority of the insurers authorized to  
30 transact that kind of insurance in this state.

31 (3) Coverage shall not be procured from an unauthorized insurer for  
32 the purpose of securing a lower premium rate than would be accepted by  
33 any authorized insurer nor to secure any other competitive advantage.

34 (4) The commissioner may by regulation establish the degree of  
35 effort required to comply with subsections (2) and (3) of this section.

36 (5) At the time of ~~((the))~~ procuring ~~((of any such))~~ the insurance  
37 ~~((an affidavit setting forth))~~ the surplus line broker must certify to

1 the accuracy of the facts ((referred to)) supporting the surplus line  
2 broker's diligent effort required in subsections (2) and (3) of this  
3 section ~~((must be executed by the surplus line broker. Such affidavit~~  
4 ~~shall)).~~

5 (a) The certification must set forth the facts supporting the  
6 surplus line broker's diligent effort.

7 (b) The certification must state that under the penalty of  
8 suspension or revocation of the surplus line broker's license the facts  
9 contained in the certification are true and correct.

10 (c) The certification may be in electronic, digital, or another  
11 format as designated by the commissioner.

12 (d) The certification must be filed with the commissioner within  
13 ~~((thirty))~~ sixty days after the insurance is procured.

14 NEW SECTION. Sec. 4. A new section is added to chapter 48.15 RCW  
15 to read as follows:

16 When a national insurance producer database of the national  
17 association of insurance commissioners, or other equivalent uniform  
18 national database, for the licensure of surplus line brokers is  
19 created, the commissioner may participate in the database.

20 NEW SECTION. Sec. 5. A new section is added to chapter 48.15 RCW  
21 to read as follows:

22 A surplus line broker seeking to procure from or place insurance  
23 with an unauthorized insurer for an exempt commercial purchaser is not  
24 required to satisfy the diligent effort requirement set forth in RCW  
25 48.15.040 when:

26 (1) The surplus line broker or referring insurance producer  
27 procuring or placing the surplus line insurance has disclosed to the  
28 exempt commercial purchaser that such insurance may or may not be  
29 available from the admitted market that may provide greater protection  
30 with more regulatory oversight; and

31 (2) The exempt commercial purchaser has subsequently requested in  
32 writing the surplus line broker or referring insurance producer to  
33 procure or place such insurance from an unauthorized insurer.

34 (3) Records of the surplus line broker's satisfaction of the  
35 requirements of this section must be maintained in compliance with RCW  
36 48.15.100.

1       **Sec. 6.** RCW 48.15.090 and 1997 c 89 s 1 are each amended to read  
2 as follows:

3       (1) A surplus line broker (~~((shall))~~) must not knowingly place  
4 surplus line insurance with insurers unsound financially. The surplus  
5 line broker (~~((shall))~~) must ascertain the financial condition of the  
6 unauthorized insurer, and maintain written evidence thereof, before  
7 placing insurance therewith. The surplus line broker (~~((shall not))~~) may  
8 only so insure with:

9       (a)(i) Any foreign insurer (~~((having less than six million dollars~~  
10 ~~of capital and surplus or substantially equivalent capital funds, of~~  
11 ~~which not less than one million five hundred thousand dollars is~~  
12 ~~capital))~~):

13       (A) That is authorized to write the kind of insurance in its  
14 domiciliary jurisdiction; and

15       (B) Has capital and surplus or its equivalent under the laws of its  
16 domiciliary jurisdiction which equals the greater of:

17       (I) The minimum capital and surplus requirements under the laws of  
18 this state; or

19       (II) Fifteen million dollars.

20       (ii) The requirements of (a)(i)(B) of this subsection may be  
21 satisfied by an insurer's possessing less than the minimum capital and  
22 surplus upon an affirmative finding of acceptability by the  
23 commissioner. The finding must be based upon factors such as quality  
24 of management, capital and surplus of any parent company, company  
25 underwriting profit and investment income trends, market availability,  
26 and company record and reputation within the industry. The  
27 commissioner is prohibited from making an affirmative finding of  
28 acceptability when the foreign insurer's capital and surplus is less  
29 than four million five hundred thousand dollars; or

30       (b) Any alien insurer (~~((having less than six million dollars of~~  
31 ~~capital and surplus or substantially equivalent capital funds. By~~  
32 ~~January 1, 1992, this requirement shall be increased to twelve million~~  
33 ~~five hundred thousand dollars. By January 1, 1993, this requirement~~  
34 ~~shall be further increased to fifteen million dollars.~~

35       ~~Such alien insurers must have in force in the United States an~~  
36 ~~irrevocable trust fund, in a qualified United States financial~~  
37 ~~institution, on behalf of United States policyholders of not less than~~  
38 ~~five million four hundred thousand dollars and consisting of cash,~~

1 securities, letters of credit, or of investments of substantially the  
2 same character and quality as those which are eligible investments for  
3 the capital and statutory reserves of admitted insurers authorized to  
4 write like kinds of insurance in this state.

5 There must be on file with the commissioner a copy of the trust,  
6 certified by the trustee, evidencing a subsisting trust fund deposit  
7 having an expiration date which at no time shall be less than five  
8 years after the date of creation of the trust. Such trust fund shall  
9 be included in the calculation of the insurer's capital and surplus or  
10 its equivalents; or

11 (c) Any group including incorporated and individual insurers  
12 maintaining a trust fund of less than fifty million dollars as security  
13 to the full amount thereof for all policyholders in the United States  
14 of each member of the group, and such trust shall likewise comply with  
15 the terms and conditions established in (b) of this subsection for an  
16 alien insurer; or

17 (d) Any insurance exchange created by the laws of an individual  
18 state, maintaining capital and surplus, or substantially equivalent  
19 capital funds of less than fifty million dollars in the aggregate. For  
20 insurance exchanges which maintain funds for the protection of all  
21 insurance exchange policyholders, each individual syndicate shall  
22 maintain minimum capital and surplus, or the substantial equivalent  
23 thereof, of not less than six million dollars. In the event the  
24 insurance exchange does not maintain funds for the protection of all  
25 insurance exchange policyholders, each individual syndicate shall meet  
26 the minimum capital and surplus requirements of (a) of this  
27 subsection)) that is listed on the quarterly listing of alien insurers  
28 maintained by the international insurers department of the national  
29 association of insurance commissioners.

30 (2) The commissioner may, by rule((+)

31 (a) Increase the financial requirements under subsection (1) of  
32 this section by not more than one million dollars in any twelve-month  
33 period, but in no case may the requirements exceed fifteen million  
34 dollars; or

35 (b)), prescribe the terms under which the foregoing financial  
36 requirements may be waived in circumstances where insurance cannot be  
37 otherwise procured on risks located in this state.



1 (3) For any violation of this section the surplus line broker may  
2 be fined not less than one hundred dollars or more than five thousand  
3 dollars, and in addition to or in lieu thereof the surplus line  
4 broker's license may be revoked, suspended, or nonrenewed.

5 **Sec. 7.** RCW 48.15.110 and 2009 c 549 s 7058 are each amended to  
6 read as follows:

7 (1) Each surplus line broker (~~shall~~) must on or before the first  
8 day of March of each year file with the commissioner a verified  
9 statement of all surplus line insurance transacted by him or her during  
10 the preceding calendar year.

11 (2) The statement (~~shall~~) must be (~~on forms~~) in a form and  
12 format as prescribed (~~and furnished~~) by the commissioner and  
13 (~~shall~~) must show:

14 (a) Aggregate of net premiums; and

15 (b) Additional information as required by the commissioner.

16 (3) This section does not apply to property and casualty insurance  
17 procured by the surplus line broker when the insured's home state is a  
18 state other than this state.

19 **Sec. 8.** RCW 48.15.120 and 2009 c 549 s 7059 are each amended to  
20 read as follows:

21 (1) On or before the first day of March of each year each surplus  
22 line broker (~~shall~~) must remit to the state treasurer through the  
23 commissioner a tax on the premiums, exclusive of sums collected to  
24 cover federal and state taxes and examination fees, on surplus line  
25 insurance subject to tax transacted by him or her during the preceding  
26 calendar year as shown by his or her annual statement filed with the  
27 commissioner, and at the same rate as is applicable to the premiums of  
28 authorized foreign insurers under this code. (~~Such~~) The tax when  
29 collected (~~shall~~) must be credited to the general fund.

30 (2) (~~If a surplus line policy covers risks or exposures only~~  
31 ~~partially in~~) For property and casualty insurance other than  
32 industrial insurance under Title 51 RCW, if this state is the insured's  
33 home state, the tax so payable (~~shall~~) must be computed upon the  
34 (~~proportion of the~~) entire premium (~~which is properly allocable to~~  
35 ~~the~~) under subsection (1) of this section, without regard to whether  
36 the policy covers risks or exposures that are located in this state.

1       (3) For all other lines of insurance, if a surplus line policy  
2 covers risks or exposures only partially in this state, the tax so  
3 payable must be computed upon the proportion of the premium that is  
4 properly allocable to the risks or exposures located in this state.

5       NEW SECTION. Sec. 9. Section 8 of this act applies to all surplus  
6 line insurance policies with an effective date on or after July 21,  
7 2011.

8       NEW SECTION. Sec. 10. Section 2 of this act expires December 31,  
9 2016.

10       NEW SECTION. Sec. 11. Section 3 of this act takes effect December  
11 31, 2016.

12       NEW SECTION. Sec. 12. Sections 1, 2, and 4 through 9 of this act  
13 are necessary for the immediate preservation of the public peace,  
14 health, or safety, or support of the state government and its existing  
15 institutions, and take effect July 21, 2011.

--- END ---