
SUBSTITUTE HOUSE BILL 1638

State of Washington 63rd Legislature 2013 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Ryu, Kirby, Cody, and Morrell; by request of Insurance Commissioner)

READ FIRST TIME 02/21/13.

1 AN ACT Relating to insurance; amending RCW 48.02.060, 48.02.120,
2 48.15.050, 48.16.030, 48.20.435, 48.21.157, 48.43.700, 48.43.705,
3 48.46.040, 48.140.040, 48.140.050, 48.155.010, 48.175.005, and
4 48.175.020; and repealing RCW 48.140.070.

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

6 **Sec. 1.** RCW 48.02.060 and 2010 c 27 s 1 are each amended to read
7 as follows:

8 (1) The commissioner has the authority expressly conferred upon him
9 or her by or reasonably implied from the provisions of this code.

10 (2) The commissioner must execute his or her duties and must
11 enforce the provisions of this code.

12 (3) The commissioner may:

13 (a) Make reasonable rules for effectuating any provision of this
14 code, except those relating to his or her election, qualifications, or
15 compensation. Rules are not effective prior to their being filed for
16 public inspection in the commissioner's office.

17 (b) Conduct investigations to determine whether any person has
18 violated any provision of this code.

1 (c) Conduct examinations, investigations, hearings, in addition to
2 those specifically provided for, useful and proper for the efficient
3 administration of any provision of this code.

4 (d) Authorize reimbursement of authorized volunteer projects,
5 training, and travel as provided in RCW 43.03.050 and 43.03.060 and
6 other reasonable expenses relating to volunteer recognition.

7 (4) When the governor proclaims a state of emergency under RCW
8 43.06.010(12), the commissioner may issue an order that addresses any
9 or all of the following matters related to insurance policies issued in
10 this state:

11 (a) Reporting requirements for claims;

12 (b) Grace periods for payment of insurance premiums and performance
13 of other duties by insureds;

14 (c) Temporary postponement of cancellations and nonrenewals; and

15 (d) Medical coverage to ensure access to care.

16 (5) An order by the commissioner under subsection (4) of this
17 section may remain effective for not more than sixty days unless the
18 commissioner extends the termination date for the order for an
19 additional period of not more than thirty days. The commissioner may
20 extend the order if, in the commissioner's judgment, the circumstances
21 warrant an extension. An order of the commissioner under subsection
22 (4) of this section is not effective after the related state of
23 emergency is terminated by proclamation of the governor under RCW
24 43.06.210. The order must specify, by line of insurance:

25 (a) The geographic areas in which the order applies, which must be
26 within but may be less extensive than the geographic area specified in
27 the governor's proclamation of a state of emergency and must be
28 specific according to an appropriate means of delineation, such as the
29 United States postal service zip codes or other appropriate means; and

30 (b) The date on which the order becomes effective and the date on
31 which the order terminates.

32 (6) The commissioner may adopt rules that establish general
33 criteria for orders issued under subsection (4) of this section and may
34 adopt emergency rules applicable to a specific proclamation of a state
35 of emergency by the governor.

36 (7) The rule-making authority set forth in subsection (6) of this
37 section does not limit or affect the rule-making authority otherwise
38 granted to the commissioner by law.

1 **Sec. 2.** RCW 48.02.120 and 2011 c 312 s 1 are each amended to read
2 as follows:

3 (1) The commissioner shall preserve in permanent form records of
4 his or her proceedings, hearings, investigations, and examinations, and
5 shall file such records in his or her office.

6 (2) The records of the commissioner and insurance filings in his or
7 her office shall be open to public inspection, except as otherwise
8 provided by this code.

9 (3) Except as provided in subsection (4) of this section, actuarial
10 formulas, statistics, and assumptions submitted in support of a rate or
11 form filing by an insurer, health care service contractor, or health
12 maintenance organization or submitted to the commissioner upon his or
13 her request shall be withheld from public inspection in order to
14 preserve trade secrets or prevent unfair competition.

15 (4) For individual and small group health benefit plan rate filings
16 submitted on or after July 1, 2011, subsection (3) of this section
17 applies only to the numeric values of each small group rating factor
18 used by a health carrier as authorized by RCW 48.21.045(3)(a),
19 48.44.023(3)(a), and 48.46.066(3)(a). Subsection (3) of this section
20 may continue to apply for a period of one year from the date a new
21 individual or small group product filing is submitted or until the next
22 rate filing for the product, whichever occurs earlier, if the
23 commissioner determines that the proposed rate filing is for a new
24 product that is distinct and unique from any of the carrier's currently
25 or previously offered health benefit plans. Carriers must make a
26 written request for a product classification as a new product under
27 this subsection and must receive subsequent written approval by the
28 commissioner for this subsection to apply.

29 (5) Unless the commissioner has determined that a filing is for a
30 new product pursuant to subsection (4) of this section, for all
31 individual or small group health benefit rate filings submitted on or
32 after July 1, 2011, the health carrier must submit part I rate increase
33 summary and part II written explanation of the rate increase as set
34 forth by the department of health and human services and as revised
35 from time to time at the time of filing, and the commissioner must:

36 (a) Make each filing and the part I rate increase summary and part
37 II written explanation of the rate increase available for public

1 inspection on the tenth calendar day after the commissioner determines
2 that the rate filing is complete and accepts the filing for review
3 through the electronic rate and form filing system; and

4 (b) Prepare a standardized rate summary form, to explain his or her
5 findings after the rate review process is completed. The
6 commissioner's summary form must be included as part of the rate filing
7 documentation and available to the public electronically.

8 **Sec. 3.** RCW 48.15.050 and 1947 c 79 s .15.05 are each amended to
9 read as follows:

10 Every insurance contract procured and delivered as a surplus line
11 coverage pursuant to this chapter (~~shall~~) must have stamped upon it
12 and be initialed by or bear the name of the surplus line broker who
13 procured it, the following:

14 "This contract is registered and delivered as a surplus line
15 coverage under the insurance code of the state of Washington, (~~enacted~~
16 ~~in 1947~~) Title 48 RCW."

17 **Sec. 4.** RCW 48.16.030 and 1955 c 86 s 5 are each amended to read
18 as follows:

19 All such deposits shall consist of cash funds or public obligations
20 as specified in RCW (~~48.13.040~~) 48.13.061(2); except, that with
21 respect to deposits held on account of registered policies heretofore
22 issued, the commissioner may accept deposit of such other kinds of
23 securities as are expressly required to be deposited by the terms of
24 such policies.

25 **Sec. 5.** RCW 48.20.435 and 2012 c 211 s 15 are each amended to read
26 as follows:

27 (1) Each disability insurance contract that is (~~not~~
28 ~~grandfathered~~) a nongrandfathered health benefit plan and that
29 provides coverage for a subscriber's child must offer the option of
30 covering any child under the age of twenty-six.

31 (2) Each grandfathered disability insurance contract that provides
32 coverage for a subscriber's child must offer the option of covering any
33 child under the age of twenty-six unless the child is eligible to
34 enroll in an eligible health plan sponsored by the child's employer or
35 the child's spouse's employer.

1 (3) As used in this section, "grandfathered" has the same meaning
2 as "grandfathered health plan" in RCW 48.43.005.

3 **Sec. 6.** RCW 48.21.157 and 2011 c 314 s 17 are each amended to read
4 as follows:

5 Any group disability insurance contract or blanket disability
6 insurance contract that provides health benefit plan coverage for a
7 participating member's dependent must offer each participating member
8 the option of covering any dependent under the age of twenty-six.

9 **Sec. 7.** RCW 48.43.700 and 2012 c 87 s 6 are each amended to read
10 as follows:

11 (1) For plan or policy years beginning January 1, 2014, a carrier
12 ~~((must offer individual or small group health benefit plans that meet~~
13 ~~the definition of silver and gold level plans in section 1302 of P.L.~~
14 ~~111-148 of 2010, as amended, in any market outside the exchange in~~
15 ~~which it offers a plan that meets the definition of bronze level in~~
16 ~~section 1302 of P.L. 111-148 of 2010, as amended.~~

17 ~~(2))~~ offering a health benefit plan that meets the definition of
18 bronze level in section 1302 of P.L. 111-148 of 2010, as amended, in
19 the individual market outside of the exchange must also offer plans
20 that meet the definition of silver and gold level plans in section 1302
21 of P.L. 111-148 of 2010, as amended, in the individual market outside
22 of the exchange.

23 (2) For plan or policy years beginning January 1, 2014, a carrier
24 offering a health benefit plan that meets the definition of bronze
25 level in section 1302 of P.L. 111-148 of 2010, as amended, in the small
26 group market outside of the exchange must also offer plans that meet
27 the definition of silver and gold level plans in section 1302 of P.L.
28 111-148 of 2010, as amended, in the small group market outside of the
29 exchange.

30 (3) A health benefit plan meeting the definition of a catastrophic
31 plan in RCW 48.43.005(8)(c)(i) may only be sold through the exchange.

32 ~~((3))~~ (4) By December 1, 2016, the exchange board, in
33 consultation with the commissioner, must complete a review of the
34 impact of this section on the health and viability of the markets
35 inside and outside the exchange and submit the recommendations to the
36 legislature on whether to maintain the market rules or let them expire.

1 ((+4)) (5) The commissioner shall evaluate plans offered at each
2 actuarial value defined in section 1302 of P.L. 111-148 of 2010, as
3 amended, and determine whether variation in prescription drug benefit
4 cost-sharing, both inside and outside the exchange in both the
5 individual and small group markets results in adverse selection. If
6 so, the commissioner may adopt rules to assure substantial equivalence
7 of prescription drug cost-sharing.

8 **Sec. 8.** RCW 48.43.705 and 2012 c 87 s 7 are each amended to read
9 as follows:

10 All nongrandfathered individual and small group health plans, other
11 than catastrophic health plans, offered outside of the exchange must
12 conform with the actuarial value tiers specified in section 1302 of
13 P.L. 111-148 of 2010, as amended, as bronze, silver, gold, or platinum.

14 **Sec. 9.** RCW 48.46.040 and 2012 c 211 s 24 are each amended to read
15 as follows:

16 The commissioner shall issue a certificate of registration to the
17 applicant within sixty days of such filing unless he or she notifies
18 the applicant within such time that such application is not complete
19 and the reasons therefor; or that he or she is not satisfied that:

20 (1) The basic organizational document of the applicant permits the
21 applicant to conduct business as a health maintenance organization;

22 (2) The organization has demonstrated the intent and ability to
23 assure that comprehensive health care services will be provided in a
24 manner to assure both their availability and accessibility;

25 (3) The organization is financially responsible and may be
26 reasonably expected to meet its obligations to its enrolled
27 participants. In making this determination, the commissioner (~~shall~~)
28 must consider among other relevant factors:

29 (a) Any agreements with an insurer, a medical or hospital service
30 bureau, a government agency or any other organization paying or
31 insuring payment for health care services;

32 (b) Any agreements with providers for the provision of health care
33 services;

34 (c) Any arrangements for liability and malpractice insurance
35 coverage; and

1 (~~(e)~~) (d) Adequate procedures to be implemented to meet the
2 protection against insolvency requirements in RCW 48.46.245;

3 (4) The procedures for offering health care services and offering
4 or terminating contracts with enrolled participants are reasonable and
5 equitable in comparison with prevailing health insurance subscription
6 practices and health maintenance organization enrollment procedures;
7 and, that

8 (5) Procedures have been established to:

9 (a) Monitor the quality of care provided by such organization,
10 including, as a minimum, procedures for internal peer review;

11 (b) Offer enrolled participants an opportunity to participate in
12 matters of policy and operation in accordance with RCW 48.46.020(18)
13 and 48.46.070.

14 No person to whom a certificate of registration has not been
15 issued, except a health maintenance organization certified by the
16 secretary of the department of health and human services, pursuant to
17 Public Law 93-222 or its successor, (~~shall~~) must use the words
18 "health maintenance organization" or the initials "HMO" in its name,
19 contracts, or literature. Persons who are contracting with, operating
20 in association with, recruiting enrolled participants for, or otherwise
21 authorized by a health maintenance organization possessing a
22 certificate of registration to act on its behalf may use the terms
23 "health maintenance organization" or "HMO" for the limited purpose of
24 denoting or explaining their relationship to such health maintenance
25 organization.

26 The department of health, at the request of the insurance
27 commissioner, (~~shall~~) must inspect and review the facilities of every
28 applicant health maintenance organization to determine that such
29 facilities are reasonably adequate to provide the health care services
30 offered in their contracts. If the commissioner has information to
31 indicate that such facilities fail to continue to be adequate to
32 provide the health care services offered, the department of health,
33 upon request of the insurance commissioner, (~~shall~~) must reinspect
34 and review the facilities and report to the insurance commissioner as
35 to their adequacy or inadequacy.

36 **Sec. 10.** RCW 48.140.040 and 2006 c 8 s 204 are each amended to
37 read as follows:

1 ~~((The commissioner must prepare aggregate statistical summaries of~~
2 ~~closed claims based on data submitted under RCW 48.140.020.~~

3 ~~(1) At a minimum, the commissioner must summarize data by calendar~~
4 ~~year and calendar/incident year. The commissioner may also decide to~~
5 ~~display data in other ways if the commissioner:~~

6 ~~(a) Protects information as required under RCW 48.140.060(2); and~~

7 ~~(b) Exempts from disclosure data described in RCW 42.56.400(11).~~

8 ~~(2) The summaries must be available by April 30th of each year,~~
9 ~~unless the commissioner notifies legislative committees by March 15th~~
10 ~~that data are not available and informs the committees when the~~
11 ~~summaries will be completed.~~

12 ~~(3))~~ Information included in an individual closed claim report
13 submitted by an insuring entity, self-insurer, provider, or facility
14 under this chapter is confidential and exempt from public disclosure,
15 and the commissioner must not make these data available to the public.

16 **Sec. 11.** RCW 48.140.050 and 2006 c 8 s 205 are each amended to
17 read as follows:

18 ~~((Beginning in 2010,))~~ The commissioner must prepare an annual
19 report that summarizes and analyzes the medical malpractice closed
20 claim ~~((reports for medical malpractice))~~ data filed under RCW
21 48.140.020 and 7.70.140 and the annual financial ~~((reports))~~ data filed
22 ~~((by authorized insurers))~~ with the national association of insurance
23 commissioners by insuring entities writing medical malpractice
24 insurance in this state. The commissioner must complete the report by
25 ~~((June 30th, unless the commissioner notifies legislative committees by~~
26 ~~June 1st that data are not available and informs the committees when~~
27 ~~the summaries will be completed))~~ September 1st.

28 (1) The report must include:

29 (a) An analysis of reported closed claims from prior years for
30 which data are collected. The analysis must show:

31 (i) Trends in the frequency and severity of claim payments;

32 (ii) A comparison of economic and noneconomic damages;

33 (iii) A distribution of allocated loss adjustment expenses and
34 other legal expenses;

35 (iv) The types of medical malpractice for which claims have been
36 paid; and

1 (v) Any other information the commissioner finds relevant to trends
2 in medical malpractice closed claims if the commissioner:

3 (A) Protects information as required under RCW 48.140.060(2); and

4 (B) Exempts from disclosure data described in RCW 42.56.400(~~(+11)~~)
5 (10);

6 (b) An analysis of the medical malpractice insurance market in
7 Washington state, including:

8 (i) An analysis of the financial (~~(reports)~~) data of the authorized
9 insurers with a combined market share of at least ninety percent of
10 direct written medical malpractice premium in Washington state for the
11 prior calendar year;

12 (ii) A loss ratio analysis of medical malpractice insurance written
13 in Washington state; and

14 (iii) A profitability analysis of the authorized insurers with a
15 combined market share of at least ninety percent of direct written
16 medical malpractice premium in Washington state for the prior calendar
17 year;

18 (c) A comparison of loss ratios and the profitability of medical
19 malpractice insurance in Washington state to other states based on
20 financial (~~(reports)~~) data filed with the national association of
21 insurance commissioners and any other source of information the
22 commissioner deems relevant; and

23 (d) A summary of the rate filings for medical malpractice that have
24 been approved by the commissioner for the prior calendar year,
25 including an analysis of the trend of direct incurred losses as
26 compared to prior years.

27 (2) The commissioner must post reports required by this section on
28 the internet no later than thirty days after they are due.

29 (3) The commissioner may adopt rules that require insuring entities
30 and self-insurers required to report under RCW 48.140.020 and
31 subsection (1)(a) of this section to report data related to:

32 (a) The frequency and severity of closed claims for the reporting
33 period; and

34 (b) Any other closed claim information that helps the commissioner
35 monitor losses and claim development patterns in the Washington state
36 medical malpractice insurance market.

1 **Sec. 12.** RCW 48.155.010 and 2010 c 27 s 4 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Affiliate" means a person that directly, or indirectly through
6 one or more intermediaries, controls, or is controlled by, or is under
7 common control with, the person specified.

8 (2) "Commissioner" means the Washington state insurance
9 commissioner.

10 (3)(a) "Control" or "controlled by" or "under common control with"
11 means the possession, direct or indirect, of the power to direct or
12 cause the direction of the management and policies of a person, whether
13 through the ownership of voting securities, by contract other than a
14 commercial contract for goods or nonmanagement services, or otherwise,
15 unless the power is the result of an official position with or
16 corporate office held by the person.

17 (b) Control exists when any person, directly or indirectly, owns,
18 controls, holds with the power to vote, or holds proxies representing
19 ten percent or more of the voting securities of any other person. A
20 presumption of control may be rebutted by a showing made in the manner
21 provided by RCW 48.31B.005(2) and 48.31B.025(11) that control does not
22 exist in fact. The commissioner may determine, after furnishing all
23 persons in interest notice and opportunity to be heard and making
24 specific findings of fact to support the determination, that control
25 exists in fact, notwithstanding the absence of a presumption to that
26 effect.

27 (4)(a) "Discount plan" means a business arrangement or contract in
28 which a person or organization, in exchange for fees, dues, charges, or
29 other consideration, provides or purports to provide discounts to its
30 members on charges by providers for health care services.

31 (b) "Discount plan" does not include:

32 (i) A plan that does not charge a membership or other fee to use
33 the plan's discount card;

34 (ii) A patient access program as defined in this chapter;

35 (iii) A medicare prescription drug plan as defined in this chapter;

36 or

37 (iv) A discount plan offered by a health carrier authorized under
38 chapter 48.20, 48.21, 48.44, or 48.46 RCW.

1 (5)(a) "Discount plan organization" means a person that, in
2 exchange for fees, dues, charges, or other consideration, provides or
3 purports to provide access to discounts to its members on charges by
4 providers for health care services. "Discount plan organization" also
5 means a person or organization that contracts with providers, provider
6 networks, or other discount plan organizations to offer discounts on
7 health care services to its members. This term also includes all
8 persons that determine the charge to or other consideration paid by
9 members.

10 (b) "Discount plan organization" does not mean:

11 (i) Pharmacy benefit managers;

12 (ii) Health care provider networks, when the network's only
13 involvement in discount plans is contracting with the plan to provide
14 discounts to the plan's members;

15 (iii) Marketers who market the discount plans of discount plan
16 organizations which are licensed under this chapter as long as all
17 written communications of the marketer in connection with a discount
18 plan clearly identify the licensed discount plan organization as the
19 responsible entity; or

20 (iv) Health carriers, if the discount on health care services is
21 offered by a health carrier authorized under chapter 48.20, 48.21,
22 48.44, or 48.46 RCW.

23 (6) "Health care facility" or "facility" has the same meaning as in
24 RCW 48.43.005(~~(+15)~~)).

25 (7) "Health care provider" or "provider" has the same meaning as in
26 RCW 48.43.005(~~(+16)~~)).

27 (8) "Health care provider network," "provider network," or
28 "network" means any network of health care providers, including any
29 person or entity that negotiates directly or indirectly with a discount
30 plan organization on behalf of more than one provider to provide health
31 care services to members.

32 (9) "Health care services" has the same meaning as in RCW
33 48.43.005(~~(+17)~~)).

34 (10) "Health carrier" or "carrier" has the same meaning as in RCW
35 48.43.005(~~(+18)~~)).

36 (11) "Marketer" means a person or entity that markets, promotes,
37 sells, or distributes a discount plan, including a contracted marketing

1 organization and a private label entity that places its name on and
2 markets or distributes a discount plan pursuant to a marketing
3 agreement with a discount plan organization.

4 (12) "Medicare prescription drug plan" means a plan that provides
5 a medicare part D prescription drug benefit in accordance with the
6 requirements of the federal medicare prescription drug improvement and
7 modernization act of 2003.

8 (13) "Member" means any individual who pays fees, dues, charges, or
9 other consideration for the right to receive the benefits of a discount
10 plan, but does not include any individual who enrolls in a patient
11 access program.

12 (14) "Patient access program" means a voluntary program sponsored
13 by a pharmaceutical manufacturer, or a consortium of pharmaceutical
14 manufacturers, that provides free or discounted health care products
15 for no additional consideration directly to low-income or uninsured
16 individuals either through a discount card or direct shipment.

17 (15) "Person" means an individual, a corporation, a governmental
18 entity, a partnership, an association, a joint venture, a joint stock
19 company, a trust, an unincorporated organization, any similar entity,
20 or any combination of the persons listed in this subsection.

21 (16)(a) "Pharmacy benefit manager" means a person that performs
22 pharmacy benefit management for a covered entity.

23 (b) For purposes of this subsection, a "covered entity" means an
24 insurer, a health care service contractor, a health maintenance
25 organization, or a multiple employer welfare arrangement licensed,
26 certified, or registered under the provisions of this title. "Covered
27 entity" also means a health program administered by the state as a
28 provider of health coverage, a single employer that provides health
29 coverage to its employees, or a labor union that provides health
30 coverage to its members as part of a collective bargaining agreement.

31 **Sec. 13.** RCW 48.175.005 and 2012 c 108 s 1 are each amended to
32 read as follows:

33 For the purposes of this chapter, unless the context otherwise
34 requires:

35 (1) "Owner's insurance policy" means an automobile liability
36 insurance policy, as defined in RCW 48.22.005, that includes:

1 (a) All coverage necessary to comply with the requirements of
2 chapter 46.30 RCW; and
3 (b) Any optional coverage selected by the registered owner,
4 including:
5 (i) Personal injury protection coverage as defined in RCW
6 48.22.005;
7 (ii) Underinsured coverage as defined in RCW 48.22.030;
8 (iii) Comprehensive property damage coverage for the vehicle; and
9 (iv) Collision property damage coverage for the vehicle.
10 (2) "Personal vehicle sharing" means the operation and use of a
11 private passenger motor vehicle, by persons other than the vehicle's
12 registered owner in connection with a personal vehicle sharing program.
13 (3) "Personal vehicle sharing program" or "program" means a legal
14 entity qualified to do business in this state engaged in the business
15 of facilitating the sharing of private passenger motor vehicles for
16 noncommercial use by individuals within this state. For the purposes
17 of this subsection, "noncommercial use" means use other than that for
18 a "commercial vehicle" as defined in RCW 46.04.140.
19 (4) "Private passenger motor vehicle" means a four-wheel passenger
20 motor vehicle insured under an automobile liability insurance policy
21 covering a single individual or individuals residing in the same
22 household as the named insured.
23 (5) "Program insurance policy" means an automobile liability
24 insurance policy that is obtained by the personal vehicle sharing
25 program and that:
26 (a) Includes all coverage needed to comply with the requirements of
27 chapter 46.30 RCW;
28 (b) Includes the following optional coverages:
29 (i) Comprehensive property damage coverage for the vehicle; and
30 (ii) Collision property damage coverage for the vehicle;
31 (c) Offers to the named insured on the program policy underinsured
32 motorist coverage as defined in RCW 48.22.030;
33 (d) Offers to the named insured on the program policy
34 (~~(underinsured)~~) personal injury protection coverage as defined in RCW
35 48.22.005; and
36 (e) Does not include any other optional coverage selected by the
37 owner of the vehicle and included in the owner's insurance policy.

1 **Sec. 14.** RCW 48.175.020 and 2012 c 108 s 3 are each amended to
2 read as follows:

3 (1) Notwithstanding any provision in the owner's insurance policy
4 and notwithstanding chapter 46.29 RCW, in the event of any loss or
5 injury that occurs at any time when the vehicle is under the operation
6 or control of a person, other than the vehicle's registered owner,
7 pursuant to a program, or is otherwise under the control of a program,
8 the program shall assume all liability of the vehicle owner and shall
9 be considered the vehicle owner for all purposes.

10 (2) Nothing in subsection (1) of this section:

11 (a) Limits the liability of a program for any acts or omissions by
12 the program that result in injury to any persons as a result of the use
13 or operation of the program; or

14 (b) Limits the ability of the program to, by contract, seek
15 indemnification from the vehicle's registered owner for any claims paid
16 by the program for any loss or injury resulting from fraud or
17 intentional material (~~intentional~~) misrepresentation by the vehicle's
18 registered owner, provided that the vehicle sharing program disclose in
19 the contract that:

20 (i) The program is entitled to seek indemnification in these
21 circumstances; and

22 (ii) The registered owner's insurance policy does not provide
23 defense or indemnification for any loss or injury resulting from fraud
24 or (~~material~~) intentional material misrepresentation.

25 (3) A program continues to be liable under subsection (1) of this
26 section until:

27 (a) The vehicle is returned to a location designated by the
28 program, as set forth in the contract between the registered owner and
29 the program; and

30 (b)(i) The expiration of the time period established for the
31 vehicle occurs;

32 (ii) The intent to terminate the vehicle's personal vehicle sharing
33 use is verifiably communicated to the program, as set forth in the
34 contract between the registered owner and the program; or

35 (iii) The vehicle's registered owner takes possession and control
36 of the vehicle.

37 (4)(a) A program shall assume liability, including the costs of

1 defense and indemnification, for a claim in which a dispute exists as
2 to who was in control of a private passenger motor vehicle when the
3 loss giving rise to the claim occurred.

4 (b) The insurer of the vehicle shall indemnify the program to the
5 extent of the insurer's obligation under the owner's insurance policy,
6 if it is determined that the vehicle's registered owner was in control
7 of the vehicle at the time of the loss.

8 (5) If a private passenger motor vehicle's registered owner is
9 named as a defendant in a civil action for any loss or injury that
10 occurs at any time when the vehicle is under the operation or control
11 of a person, other than the vehicle's registered owner, pursuant to a
12 program, or is otherwise under the control of a program, the program
13 shall have the duty to defend and indemnify the vehicle's registered
14 owner.

15 (6)(a) Notwithstanding any provision in the owner's insurance
16 policy, while the vehicle is under the operation or control of a
17 person, other than the vehicle's registered owner, pursuant to a
18 program, or is otherwise under the control of a program:

19 (i) The insurer providing coverage to the owner of a private
20 passenger motor vehicle may exclude any and all coverage afforded under
21 the owner's insurance policy; and

22 (ii) A primary or excess insurer of the vehicle owner may notify an
23 insured that the insurer has no duty to defend or indemnify any person
24 or organization for liability for any loss that occurs during use of
25 the vehicle pursuant to a program;

26 (b) In order to exclude such coverage, the exclusion allowed in
27 (a)(i) of this subsection and the notification required in (a)(ii) of
28 this subsection are not required for a policy that otherwise does not
29 provide such coverages.

30 (7) An owner's insurance policy for a private passenger motor
31 vehicle may not be canceled, voided, terminated, rescinded, or
32 nonrenewed solely on the basis that the vehicle has been made available
33 for personal vehicle sharing pursuant to a program that is in
34 compliance with the provisions of this chapter.

35 NEW SECTION. **Sec. 15.** RCW 48.140.070 (Model statistical reporting

1 standards--Report to legislature) and 2006 c 8 s 207 are each repealed.

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