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HOUSE BILL 1638

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Ryu, Kirby, Cody, and Morrell; by request of Insurance Commissioner

Read first time 02/04/13. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to insurance; amending RCW 48.02.060, 48.02.120,  
2 48.15.050, 48.15.120, 48.16.030, 48.20.435, 48.21.157, 48.43.700,  
3 48.43.705, 48.46.040, 48.140.040, 48.140.050, 48.155.010, 48.175.005,  
4 and 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 48.15.120 and 2011 c 31 s 8 are each amended to read  
18 as follows:

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

28 (2) For property and casualty insurance other than industrial  
29 insurance under Title 51 RCW, if this state is the insured's home  
30 state, the tax so payable must be computed upon the entire premium  
31 under subsection (1) of this section, without regard to whether the  
32 policy covers risks or exposures that are located in this state, except  
33 when the surplus line policy covers risks or exposures located both  
34 inside and outside of the United States and its territories. In that  
35 case, the tax is computed without regard to the proportion of the

1 premium properly allocable to the risks and exposures located outside  
2 of the United States and its territories.

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

7 **Sec. 5.** RCW 48.16.030 and 1955 c 86 s 5 are each amended to read  
8 as follows:

9 All such deposits shall consist of cash funds or public obligations  
10 as specified in RCW ((48.13.040)) 48.13.061(2); except, that with  
11 respect to deposits held on account of registered policies heretofore  
12 issued, the commissioner may accept deposit of such other kinds of  
13 securities as are expressly required to be deposited by the terms of  
14 such policies.

15 **Sec. 6.** RCW 48.20.435 and 2012 c 211 s 15 are each amended to read  
16 as follows:

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

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

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

28 **Sec. 7.** RCW 48.21.157 and 2011 c 314 s 17 are each amended to read  
29 as follows:

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

1           **Sec. 8.** RCW 48.43.700 and 2012 c 87 s 6 are each amended to read  
2 as follows:

3           (1) For plan or policy years beginning January 1, 2014, a carrier  
4 ~~((must offer individual or small group health benefit plans that meet~~  
5 ~~the definition of silver and gold level plans in section 1302 of P.L.~~  
6 ~~111-148 of 2010, as amended, in any market outside the exchange in~~  
7 ~~which it offers a plan that meets the definition of bronze level in~~  
8 ~~section 1302 of P.L. 111-148 of 2010, as amended.~~

9           ~~(2))~~ offering a health benefit plan that meets the definition of  
10 bronze level in section 1302 of P.L. 111-148 of 2010, as amended, in  
11 the individual market outside of the exchange must also offer plans  
12 that meet the definition of silver and gold level plans in section 1302  
13 of P.L. 111-148 of 2010, as amended, in the individual market outside  
14 of the exchange.

15           (2) For plan or policy years beginning January 1, 2014, a carrier  
16 offering a health benefit plan that meets the definition of bronze  
17 level in section 1302 of P.L. 111-148 of 2010, as amended, in the small  
18 group market outside of the exchange must also offer plans that meet  
19 the definition of silver and gold level plans in section 1302 of P.L.  
20 111-148 of 2010, as amended, in the small group market outside of the  
21 exchange.

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

24           ~~((3))~~ (4) By December 1, 2016, the exchange board, in  
25 consultation with the commissioner, must complete a review of the  
26 impact of this section on the health and viability of the markets  
27 inside and outside the exchange and submit the recommendations to the  
28 legislature on whether to maintain the market rules or let them expire.

29           ~~((4))~~ (5) The commissioner shall evaluate plans offered at each  
30 actuarial value defined in section 1302 of P.L. 111-148 of 2010, as  
31 amended, and determine whether variation in prescription drug benefit  
32 cost-sharing, both inside and outside the exchange in both the  
33 individual and small group markets results in adverse selection. If  
34 so, the commissioner may adopt rules to assure substantial equivalence  
35 of prescription drug cost-sharing.

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

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

5 **Sec. 10.** RCW 48.46.040 and 2012 c 211 s 24 are each amended to  
6 read as follows:

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

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

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

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

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

23 (b) Any agreements with providers for the provision of health care  
24 services;

25 (c) Any arrangements for liability and malpractice insurance  
26 coverage; and

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

29 (4) The procedures for offering health care services and offering  
30 or terminating contracts with enrolled participants are reasonable and  
31 equitable in comparison with prevailing health insurance subscription  
32 practices and health maintenance organization enrollment procedures;  
33 and, that

34 (5) Procedures have been established to:

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

1 (b) Offer enrolled participants an opportunity to participate in  
2 matters of policy and operation in accordance with RCW 48.46.020(18)  
3 and 48.46.070.

4 No person to whom a certificate of registration has not been  
5 issued, except a health maintenance organization certified by the  
6 secretary of the department of health and human services, pursuant to  
7 Public Law 93-222 or its successor, ~~((shall))~~ must use the words  
8 "health maintenance organization" or the initials "HMO" in its name,  
9 contracts, or literature. Persons who are contracting with, operating  
10 in association with, recruiting enrolled participants for, or otherwise  
11 authorized by a health maintenance organization possessing a  
12 certificate of registration to act on its behalf may use the terms  
13 "health maintenance organization" or "HMO" for the limited purpose of  
14 denoting or explaining their relationship to such health maintenance  
15 organization.

16 The department of health, at the request of the insurance  
17 commissioner, ~~((shall))~~ must inspect and review the facilities of every  
18 applicant health maintenance organization to determine that such  
19 facilities are reasonably adequate to provide the health care services  
20 offered in their contracts. If the commissioner has information to  
21 indicate that such facilities fail to continue to be adequate to  
22 provide the health care services offered, the department of health,  
23 upon request of the insurance commissioner, ~~((shall))~~ must reinspect  
24 and review the facilities and report to the insurance commissioner as  
25 to their adequacy or inadequacy.

26 **Sec. 11.** RCW 48.140.040 and 2006 c 8 s 204 are each amended to  
27 read as follows:

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

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

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

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

35 ~~(2) The summaries must be available by April 30th of each year,  
36 unless the commissioner notifies legislative committees by March 15th~~

1 ~~that data are not available and informs the committees when the~~  
2 ~~summaries will be completed.~~

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

7 **Sec. 12.** RCW 48.140.050 and 2006 c 8 s 205 are each amended to  
8 read as follows:

9 ~~((Beginning in 2010,))~~ The commissioner must prepare an annual  
10 report that summarizes and analyzes the medical malpractice closed  
11 claim ~~((reports for medical malpractice))~~ data filed under RCW  
12 48.140.020 and 7.70.140 and the annual financial ~~((reports))~~ data filed  
13 ~~((by authorized insurers))~~ with the national association of insurance  
14 commissioners by insuring entities writing medical malpractice  
15 insurance in this state. The commissioner must complete the report by  
16 ~~((June 30th, unless the commissioner notifies legislative committees by~~  
17 ~~June 1st that data are not available and informs the committees when~~  
18 ~~the summaries will be completed))~~ September 1st.

19 (1) The report must include:

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

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

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

24 (iii) A distribution of allocated loss adjustment expenses and  
25 other legal expenses;

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

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

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

31 (B) Exempts from disclosure data described in RCW 42.56.400~~((+11))~~  
32 (10);

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

35 (i) An analysis of the financial ~~((reports))~~ data of the authorized  
36 insurers with a combined market share of at least ninety percent of

1 direct written medical malpractice premium in Washington state for the  
2 prior calendar year;

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

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

9 (c) A comparison of loss ratios and the profitability of medical  
10 malpractice insurance in Washington state to other states based on  
11 financial ((reports)) data filed with the national association of  
12 insurance commissioners and any other source of information the  
13 commissioner deems relevant; and

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

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

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

23 (a) The frequency and severity of closed claims for the reporting  
24 period; and

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

28 **Sec. 13.** RCW 48.155.010 and 2010 c 27 s 4 are each amended to read  
29 as follows:

30 The definitions in this section apply throughout this chapter  
31 unless the context clearly requires otherwise.

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

35 (2) "Commissioner" means the Washington state insurance  
36 commissioner.

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

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

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

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

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

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

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

27 or

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

30 (5)(a) "Discount plan organization" means a person that, in  
31 exchange for fees, dues, charges, or other consideration, provides or  
32 purports to provide access to discounts to its members on charges by  
33 providers for health care services. "Discount plan organization" also  
34 means a person or organization that contracts with providers, provider  
35 networks, or other discount plan organizations to offer discounts on  
36 health care services to its members. This term also includes all  
37 persons that determine the charge to or other consideration paid by  
38 members.

1 (b) "Discount plan organization" does not mean:  
2 (i) Pharmacy benefit managers;  
3 (ii) Health care provider networks, when the network's only  
4 involvement in discount plans is contracting with the plan to provide  
5 discounts to the plan's members;  
6 (iii) Marketers who market the discount plans of discount plan  
7 organizations which are licensed under this chapter as long as all  
8 written communications of the marketer in connection with a discount  
9 plan clearly identify the licensed discount plan organization as the  
10 responsible entity; or  
11 (iv) Health carriers, if the discount on health care services is  
12 offered by a health carrier authorized under chapter 48.20, 48.21,  
13 48.44, or 48.46 RCW.  
14 (6) "Health care facility" or "facility" has the same meaning as in  
15 RCW 48.43.005(~~(+15)~~).  
16 (7) "Health care provider" or "provider" has the same meaning as in  
17 RCW 48.43.005(~~(+16)~~).  
18 (8) "Health care provider network," "provider network," or  
19 "network" means any network of health care providers, including any  
20 person or entity that negotiates directly or indirectly with a discount  
21 plan organization on behalf of more than one provider to provide health  
22 care services to members.  
23 (9) "Health care services" has the same meaning as in RCW  
24 48.43.005(~~(+17)~~).  
25 (10) "Health carrier" or "carrier" has the same meaning as in RCW  
26 48.43.005(~~(+18)~~).  
27 (11) "Marketer" means a person or entity that markets, promotes,  
28 sells, or distributes a discount plan, including a contracted marketing  
29 organization and a private label entity that places its name on and  
30 markets or distributes a discount plan pursuant to a marketing  
31 agreement with a discount plan organization.  
32 (12) "Medicare prescription drug plan" means a plan that provides  
33 a medicare part D prescription drug benefit in accordance with the  
34 requirements of the federal medicare prescription drug improvement and  
35 modernization act of 2003.  
36 (13) "Member" means any individual who pays fees, dues, charges, or  
37 other consideration for the right to receive the benefits of a discount

1 plan, but does not include any individual who enrolls in a patient  
2 access program.

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

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

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

14 (b) For purposes of this subsection, a "covered entity" means an  
15 insurer, a health care service contractor, a health maintenance  
16 organization, or a multiple employer welfare arrangement licensed,  
17 certified, or registered under the provisions of this title. "Covered  
18 entity" also means a health program administered by the state as a  
19 provider of health coverage, a single employer that provides health  
20 coverage to its employees, or a labor union that provides health  
21 coverage to its members as part of a collective bargaining agreement.

22 **Sec. 14.** RCW 48.175.005 and 2012 c 108 s 1 are each amended to  
23 read as follows:

24 For the purposes of this chapter, unless the context otherwise  
25 requires:

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

28 (a) All coverage necessary to comply with the requirements of  
29 chapter 46.30 RCW; and

30 (b) Any optional coverage selected by the registered owner,  
31 including:

32 (i) Personal injury protection coverage as defined in RCW  
33 48.22.005;

34 (ii) Underinsured coverage as defined in RCW 48.22.030;

35 (iii) Comprehensive property damage coverage for the vehicle; and

36 (iv) Collision property damage coverage for the vehicle.

1 (2) "Personal vehicle sharing" means the operation and use of a  
2 private passenger motor vehicle, by persons other than the vehicle's  
3 registered owner in connection with a personal vehicle sharing program.

4 (3) "Personal vehicle sharing program" or "program" means a legal  
5 entity qualified to do business in this state engaged in the business  
6 of facilitating the sharing of private passenger motor vehicles for  
7 noncommercial use by individuals within this state. For the purposes  
8 of this subsection, "noncommercial use" means use other than that for  
9 a "commercial vehicle" as defined in RCW 46.04.140.

10 (4) "Private passenger motor vehicle" means a four-wheel passenger  
11 motor vehicle insured under an automobile liability insurance policy  
12 covering a single individual or individuals residing in the same  
13 household as the named insured.

14 (5) "Program insurance policy" means an automobile liability  
15 insurance policy that is obtained by the personal vehicle sharing  
16 program and that:

17 (a) Includes all coverage needed to comply with the requirements of  
18 chapter 46.30 RCW;

19 (b) Includes the following optional coverages:

20 (i) Comprehensive property damage coverage for the vehicle; and

21 (ii) Collision property damage coverage for the vehicle;

22 (c) Offers to the named insured on the program policy underinsured  
23 motorist coverage as defined in RCW 48.22.030;

24 (d) Offers to the named insured on the program policy  
25 (~~underinsured~~) personal injury protection coverage as defined in RCW  
26 48.22.005; and

27 (e) Does not include any other optional coverage selected by the  
28 owner of the vehicle and included in the owner's insurance policy.

29 **Sec. 15.** RCW 48.175.020 and 2012 c 108 s 3 are each amended to  
30 read as follows:

31 (1) Notwithstanding any provision in the owner's insurance policy  
32 and notwithstanding chapter 46.29 RCW, in the event of any loss or  
33 injury that occurs at any time when the vehicle is under the operation  
34 or control of a person, other than the vehicle's registered owner,  
35 pursuant to a program, or is otherwise under the control of a program,  
36 the program shall assume all liability of the vehicle owner and shall  
37 be considered the vehicle owner for all purposes.

1 (2) Nothing in subsection (1) of this section:  
2 (a) Limits the liability of a program for any acts or omissions by  
3 the program that result in injury to any persons as a result of the use  
4 or operation of the program; or  
5 (b) Limits the ability of the program to, by contract, seek  
6 indemnification from the vehicle's registered owner for any claims paid  
7 by the program for any loss or injury resulting from fraud or  
8 intentional material (~~(intentional)~~) misrepresentation by the vehicle's  
9 registered owner, provided that the vehicle sharing program disclose in  
10 the contract that:  
11 (i) The program is entitled to seek indemnification in these  
12 circumstances; and  
13 (ii) The registered owner's insurance policy does not provide  
14 defense or indemnification for any loss or injury resulting from fraud  
15 or (~~material~~) intentional material misrepresentation.  
16 (3) A program continues to be liable under subsection (1) of this  
17 section until:  
18 (a) The vehicle is returned to a location designated by the  
19 program, as set forth in the contract between the registered owner and  
20 the program; and  
21 (b)(i) The expiration of the time period established for the  
22 vehicle occurs;  
23 (ii) The intent to terminate the vehicle's personal vehicle sharing  
24 use is verifiably communicated to the program, as set forth in the  
25 contract between the registered owner and the program; or  
26 (iii) The vehicle's registered owner takes possession and control  
27 of the vehicle.  
28 (4)(a) A program shall assume liability, including the costs of  
29 defense and indemnification, for a claim in which a dispute exists as  
30 to who was in control of a private passenger motor vehicle when the  
31 loss giving rise to the claim occurred.  
32 (b) The insurer of the vehicle shall indemnify the program to the  
33 extent of the insurer's obligation under the owner's insurance policy,  
34 if it is determined that the vehicle's registered owner was in control  
35 of the vehicle at the time of the loss.  
36 (5) If a private passenger motor vehicle's registered owner is  
37 named as a defendant in a civil action for any loss or injury that  
38 occurs at any time when the vehicle is under the operation or control

1 of a person, other than the vehicle's registered owner, pursuant to a  
2 program, or is otherwise under the control of a program, the program  
3 shall have the duty to defend and indemnify the vehicle's registered  
4 owner.

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

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

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

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

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

25 NEW SECTION. **Sec. 16.** RCW 48.140.070 (Model statistical reporting  
26 standards--Report to legislature) and 2006 c 8 s 207 are each repealed.

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