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**SUBSTITUTE SENATE BILL 5008**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Benton, and Hatfield)

READ FIRST TIME 02/07/13.

1       AN ACT Relating to portable electronics insurance; amending RCW  
2 48.18.103, 48.19.040, 48.19.043, 48.120.015, 48.120.020, 48.120.020,  
3 and 48.120.025; adding a new section to chapter 48.18 RCW; providing an  
4 effective date; and providing an expiration date.

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

6       **Sec. 1.** RCW 48.18.103 and 2006 c 8 s 215 are each amended to read  
7 as follows:

8       (1) It is the intent of the legislature to assist the purchasers of  
9 commercial property casualty insurance by allowing policies to be  
10 issued more expeditiously and provide a more competitive market for  
11 forms.

12       (2) Commercial property casualty policies may be issued prior to  
13 filing the forms.

14       (3) All commercial property casualty forms must be filed with the  
15 commissioner within thirty days after an insurer issues any policy  
16 using them. This subsection does not apply to:

17       (a) Types or classes of forms that the commissioner exempts from  
18 filing by rule; and

1 (b) Manuscript policies, riders, or endorsements of unique  
2 character designed for and used with relation to insurance upon a  
3 particular subject.

4 (4) If, within thirty days after a commercial property casualty  
5 form has been filed, the commissioner finds that the form does not meet  
6 the requirements of this chapter, the commissioner shall disapprove the  
7 form and give notice to the insurer or rating organization that made  
8 the filing, specifying how the form fails to meet the requirements and  
9 stating when, within a reasonable period thereafter, the form shall be  
10 deemed no longer effective. The commissioner may extend the time for  
11 review an additional fifteen days by giving notice to the insurer prior  
12 to the expiration of the original thirty-day period.

13 (5) Upon a final determination of a disapproval of a policy form  
14 under subsection (4) of this section, the insurer must amend any  
15 previously issued disapproved form by endorsement to comply with the  
16 commissioner's disapproval.

17 (6) For purposes of this section, "commercial property casualty"  
18 means insurance pertaining to a business, profession, occupation,  
19 nonprofit organization, or public entity for the lines of property and  
20 casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or  
21 48.11.070, but does not mean medical malpractice insurance or portable  
22 electronics insurance as defined in RCW 48.120.005.

23 (7) Except as provided in subsection (5) of this section, the  
24 disapproval shall not affect any contract made or issued prior to the  
25 expiration of the period set forth in the notice of disapproval.

26 (8) Every member or subscriber to a rating organization must adhere  
27 to the form filings made on its behalf by the organization. An insurer  
28 may deviate from forms filed on its behalf by an organization only if  
29 the insurer files the forms with the commissioner in accordance with  
30 this chapter.

31 (9) In the event a hearing is held on the actions of the  
32 commissioner under subsection (4) of this section, the burden of proof  
33 shall be on the commissioner.

34 **Sec. 2.** RCW 48.19.040 and 2012 c 222 s 1 are each amended to read  
35 as follows:

36 (1) Every insurer or rating organization shall, before using, file  
37 with the commissioner every classifications manual, manual of rules and

1 rates, rating plan, rating schedule, minimum rate, class rate, and  
2 rating rule, and every modification of any of the foregoing which it  
3 proposes. The insurer need not so file any rate on individually rated  
4 risks as described in subdivision (1) of RCW 48.19.030; except that any  
5 such specific rate made by a rating organization shall be filed.

6 (2) Every such filing shall indicate the type and extent of the  
7 coverage contemplated and must be accompanied by sufficient information  
8 to permit the commissioner to determine whether it meets the  
9 requirements of this chapter. An insurer or rating organization shall  
10 offer in support of any filing:

11 (a) The experience or judgment of the insurer or rating  
12 organization making the filing;

13 (b) An exhibit detailing the major elements of operating expense  
14 for the types of insurance affected by the filing;

15 (c) An explanation of how investment income has been taken into  
16 account in the proposed rates; and

17 (d) Any other information which the insurer or rating organization  
18 deems relevant.

19 (3) If an insurer has insufficient loss experience to support its  
20 proposed rates, it may submit:

21 (a) Loss experience for similar exposures of other insurers or of  
22 a rating organization; or

23 (b) A complete and logical explanation of how it has developed its  
24 proposed rates, including the insurer's analysis of any relevant  
25 information and showing why the proposed rates should be considered to  
26 meet the requirements of RCW 48.19.020.

27 (4) Every such filing shall state its proposed effective date.

28 (5)(a) A filing made pursuant to this chapter shall be exempt from  
29 the provisions of RCW 48.02.120(3). However, the filing and all  
30 supporting information accompanying it shall be open to public  
31 inspection only after the filing becomes effective, except as provided  
32 in (b) of this subsection.

33 (b) For the purpose of this section, "usage-based insurance" means  
34 private passenger automobile coverage that uses data gathered from any  
35 recording device as defined in RCW 46.35.010, or a system, or business  
36 method that records and preserves data arising from the actual usage of  
37 a motor vehicle to determine rates or premiums. Information in a

1 filing of usage-based insurance about the usage-based component of the  
2 rate is confidential and must be withheld from public inspection.

3 (6) Where a filing is required no insurer shall make or issue an  
4 insurance contract or policy except in accordance with its filing then  
5 in effect, except as is provided by RCW 48.19.090.

6 **Sec. 3.** RCW 48.19.043 and 2006 c 8 s 216 are each amended to read  
7 as follows:

8 (1) It is the intent of the legislature to assist the purchasers of  
9 commercial property casualty insurance by allowing policies to be  
10 issued more expeditiously and provide a more competitive market for  
11 rates.

12 (2) Notwithstanding the provisions of RCW 48.19.040(1), commercial  
13 property casualty policies may be issued prior to filing the rates.  
14 All commercial property casualty rates shall be filed with the  
15 commissioner within thirty days after an insurer issues any policy  
16 using them.

17 (3) If, within thirty days after a commercial property casualty  
18 rate has been filed, the commissioner finds that the rate does not meet  
19 the requirements of this chapter, the commissioner shall disapprove the  
20 filing and give notice to the insurer or rating organization that made  
21 the filing, specifying how the filing fails to meet the requirements  
22 and stating when, within a reasonable period thereafter, the filing  
23 shall be deemed no longer effective. The commissioner may extend the  
24 time for review another fifteen days by giving notice to the insurer  
25 prior to the expiration of the original thirty-day period.

26 (4) Upon a final determination of a disapproval of a rate filing  
27 under subsection (3) of this section, the insurer shall issue an  
28 endorsement changing the rate to comply with the commissioner's  
29 disapproval from the date the rate is no longer effective.

30 (5) For purposes of this section, "commercial property casualty"  
31 means insurance pertaining to a business, profession, occupation,  
32 nonprofit organization, or public entity for the lines of property and  
33 casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or  
34 48.11.070, but does not mean medical malpractice insurance or portable  
35 electronics insurance as defined in RCW 48.120.005.

36 (6) Except as provided in subsection (4) of this section, the

1 disapproval shall not affect any contract made or issued prior to the  
2 expiration of the period set forth in the notice of disapproval.

3 (7) In the event a hearing is held on the actions of the  
4 commissioner under subsection (3) of this section, the burden of proof  
5 is on the commissioner.

6 **Sec. 4.** RCW 48.120.015 and 2012 c 154 s 3 are each amended to read  
7 as follows:

8 (1) A specialty producer license authorizes a vendor and its  
9 employees and authorized representatives to offer and sell to, enroll  
10 in, and bill and collect premiums from customers for insurance covering  
11 portable electronics on a master, corporate, group commercial inland  
12 marine policy, or on an individual policy basis on a month-to-month or  
13 other periodic basis at each location at which the vendor engages in  
14 portable electronics transactions. However:

15 (a) The supervising person must maintain a list of a vendor's  
16 locations that are authorized to sell or solicit portable electronics  
17 insurance coverage; and

18 (b) The list under (a) of this subsection must be provided to the  
19 commissioner within ten days of a request by the commissioner.

20 (2) An employee or authorized representative of a vendor may sell  
21 or offer portable electronics insurance to the vendor's customers  
22 without being individually licensed as an insurance producer if the  
23 vendor is licensed under this chapter and is acting in compliance with  
24 this chapter and any rules adopted by the commissioner.

25 (3) A vendor billing and collecting premiums from customers for  
26 portable electronics insurance coverage is not required to maintain  
27 these funds in a segregated account if the vendor:

28 (a) Is authorized by the insurer to hold the funds in an  
29 alternative manner; and

30 (b) Remits the funds to the supervising person within sixty days of  
31 receipt.

32 (4) All funds received by a vendor from an enrolled customer for  
33 the sale of portable electronics insurance are considered funds held in  
34 trust by the vendor in a fiduciary capacity for the benefit of the  
35 insurer.

36 (5) Any charge to the enrolled customer for coverage that is not

1 included in the cost associated with the purchase or lease of portable  
2 electronics or related services must be separately itemized on the  
3 enrolled customer's bill.

4 (6) If portable electronics insurance coverage is included with the  
5 purchase or lease of portable electronics or related services, the  
6 vendor must clearly and conspicuously disclose to the enrolled customer  
7 that the portable electronics insurance coverage is included with the  
8 portable electronics or related services.

9 (7) Vendors may receive compensation for billing and collection  
10 services.

11 **Sec. 5.** RCW 48.120.020 and 2012 c 154 s 4 are each amended to read  
12 as follows:

13 (1) A vendor issued a specialty producer license may not issue  
14 insurance under RCW 48.120.015 unless:

15 (a) At every location where customers are enrolled in portable  
16 electronics insurance programs, written material regarding the program  
17 is made available to prospective customers that:

18 (i) Discloses that portable electronics insurance may provide a  
19 duplication of coverage already provided by a customer's homeowner's  
20 insurance policy, renter's insurance policy, or other source of  
21 coverage;

22 (ii) States that the enrollment by the customer in a portable  
23 electronics insurance program is not required in order to purchase or  
24 lease portable electronics or services;

25 (iii) Summarizes the material terms of the insurance coverage,  
26 including the identity of the insurer, the identity of the supervising  
27 person, the amount of any applicable deductible and how it is to be  
28 paid, benefits of the coverage, and key terms and conditions of  
29 coverage, such as whether portable electronics may be replaced with a  
30 similar make and model or reconditioned make and model or repaired with  
31 nonoriginal manufacturer parts or equipment;

32 (iv) Summarizes the process for filing a claim, including a  
33 description of how to return portable electronics and the maximum fee  
34 applicable in the event the customer fails to comply with any equipment  
35 return requirements; and

36 (v) States that an enrolled customer may cancel enrollment for

1 coverage under a portable electronics insurance policy at any time and  
2 the person paying the premium will receive a refund or credit of any  
3 applicable unearned premium; (~~and~~)

4 (b)(i) The written materials required by (a) of this subsection  
5 disclose with specificity under what circumstances and subject to what  
6 limitations an insurer may cancel, terminate, modify, or otherwise  
7 change the terms and conditions of a policy of portable electronics  
8 insurance; or

9 (ii) Within a reasonable time from the date of purchase, materials  
10 are delivered to an enrolled customer that state with specificity under  
11 what circumstances and subject to what limitations an insurer may  
12 cancel, terminate, modify, or otherwise change the terms and conditions  
13 of a policy of portable electronics insurance; and

14 (c) The portable electronics insurance program is operated with the  
15 participation of a supervising person who, with authorization and  
16 approval from the appointing insurer, supervises a training program for  
17 employees of the licensed vendor. The training must comply with the  
18 following:

19 (i) The training must be delivered to employees and authorized  
20 representatives of vendors who are directly engaged in the activity of  
21 selling or offering portable electronics insurance;

22 (ii) The training may be provided in electronic form. However, if  
23 conducted in an electronic form, the supervising person must implement  
24 a supplemental education program regarding the portable electronics  
25 insurance product that is conducted and overseen by licensed employees  
26 of the supervising person; and

27 (iii) Each employee and authorized representative must receive  
28 basic instruction about the portable electronics insurance offered to  
29 customers and the disclosures required under this section.

30 (2) No employee or authorized representative of a vendor of  
31 portable electronics may advertise, represent, or otherwise hold  
32 himself or herself out as a nonlimited lines licensed insurance  
33 producer.

34 (3) Employees and authorized representatives of a vendor issued a  
35 specialty producer license may only act on behalf of the vendor in the  
36 offer, sale, solicitation, or enrollment of customers in a portable  
37 electronics insurance program. The conduct of these employees and

1 authorized representatives within the scope of their employment or  
2 agency is the same as conduct of the vendor for purposes of this title.

3 **Sec. 6.** RCW 48.120.020 and 2012 c 154 s 4 are each amended to read  
4 as follows:

5 (1) A vendor issued a specialty producer license may not issue  
6 insurance under RCW 48.120.015 unless:

7 (a) At every location where customers are enrolled in portable  
8 electronics insurance programs, written material regarding the program  
9 is made available to prospective customers that:

10 (i) Discloses that portable electronics insurance may provide a  
11 duplication of coverage already provided by a customer's homeowner's  
12 insurance policy, renter's insurance policy, or other source of  
13 coverage;

14 (ii) States that the enrollment by the customer in a portable  
15 electronics insurance program is not required in order to purchase or  
16 lease portable electronics or services;

17 (iii) Summarizes the material terms of the insurance coverage,  
18 including the identity of the insurer, the identity of the supervising  
19 person, the amount of any applicable deductible and how it is to be  
20 paid, benefits of the coverage, and key terms and conditions of  
21 coverage, such as whether portable electronics may be replaced with a  
22 similar make and model or reconditioned make and model or repaired with  
23 nonoriginal manufacturer parts or equipment;

24 (iv) Summarizes the process for filing a claim, including a  
25 description of how to return portable electronics and the maximum fee  
26 applicable in the event the customer fails to comply with any equipment  
27 return requirements; ~~((and))~~

28 (v) States that an enrolled customer may cancel enrollment for  
29 coverage under a portable electronics insurance policy at any time and  
30 the person paying the premium will receive a refund or credit of any  
31 applicable unearned premium; and

32 (vi) Discloses with specificity under what circumstances and  
33 subject to what limitations an insurer may cancel, terminate, modify,  
34 or otherwise change the terms and conditions of a policy of portable  
35 electronics insurance; and

36 (b) The portable electronics insurance program is operated with the  
37 participation of a supervising person who, with authorization and



1 approval from the appointing insurer, supervises a training program for  
2 employees of the licensed vendor. The training must comply with the  
3 following:

4 (i) The training must be delivered to employees and authorized  
5 representatives of vendors who are directly engaged in the activity of  
6 selling or offering portable electronics insurance;

7 (ii) The training may be provided in electronic form. However, if  
8 conducted in an electronic form, the supervising person must implement  
9 a supplemental education program regarding the portable electronics  
10 insurance product that is conducted and overseen by licensed employees  
11 of the supervising person; and

12 (iii) Each employee and authorized representative must receive  
13 basic instruction about the portable electronics insurance offered to  
14 customers and the disclosures required under this section.

15 (2) No employee or authorized representative of a vendor of  
16 portable electronics may advertise, represent, or otherwise hold  
17 himself or herself out as a nonlimited lines licensed insurance  
18 producer.

19 (3) Employees and authorized representatives of a vendor issued a  
20 specialty producer license may only act on behalf of the vendor in the  
21 offer, sale, solicitation, or enrollment of customers in a portable  
22 electronics insurance program. The conduct of these employees and  
23 authorized representatives within the scope of their employment or  
24 agency is the same as conduct of the vendor for purposes of this title.

25 **Sec. 7.** RCW 48.120.025 and 2002 c 357 s 5 are each amended to read  
26 as follows:

27 (1) A vendor issued a specialty producer license under this chapter  
28 is subject to RCW ((~~48.17.540~~)) 48.17.530 through 48.17.560.

29 (2) The commissioner may adopt rules necessary for the  
30 implementation of this chapter, including, but not limited to, rules  
31 governing:

32 (a) The specialty producer license application process, including  
33 any forms required to be used;

34 (b) The standards for approval and the required content of written  
35 materials required under RCW 48.120.020(1)(a);

36 (c) The approval and required content of training materials  
37 required under RCW 48.120.020(1)((~~b~~)) (c);

1 (d) Establishing license fees to defray the cost of administering  
2 the specialty producer licensure program;

3 (e) Establishing requirements for the remittance of premium funds  
4 to the supervising agent under authority from the program insurer; and

5 (f) Determining the applicability or nonapplicability of other  
6 provisions of this title to this chapter.

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 48.18 RCW  
8 to read as follows:

9 (1) The cancellation provisions in RCW 48.18.290 and the nonrenewal  
10 provisions in RCW 48.18.2901 apply to portable electronics insurance  
11 policies issued under chapter 48.120 RCW, unless inconsistent with this  
12 section in which case this section controls.

13 (2) An insurer may cancel, nonrenew, modify, or otherwise change  
14 the terms and conditions of a policy of portable electronics only:

15 (a) Upon providing the policyholder and enrolled customers with at  
16 least thirty days' notice; or

17 (b) As provided in subsections (5) through (7) of this section.

18 (3) An insurer may not increase premiums or deductibles or  
19 otherwise restrict benefits more than once in any six-month period.

20 (4) If an insurer changes the terms and conditions, then the  
21 insurer must provide:

22 (a) The vendor policyholder with a revised policy endorsement; and

23 (b) Each enrolled customer with:

24 (i) A revised certificate or endorsement and a summary of material  
25 changes; or

26 (ii) If the change is limited to a change in premium, a revised  
27 certificate, endorsement, updated brochure, or other evidence  
28 indicating a change in premium.

29 (5) An insurer may terminate an enrolled customer's enrollment  
30 under a portable electronics insurance policy upon fifteen days' notice  
31 for discovery of fraud or material misrepresentation in obtaining  
32 coverage or in the presentation of a claim.

33 (6) An insurer may terminate an enrolled customer's enrollment  
34 under a portable electronics insurance policy upon ten days' notice for  
35 nonpayment of premium.

36 (7) An insurer may immediately terminate an enrolled customer's  
37 enrollment under a portable electronics insurance policy:

1 (a) Without notice, if the enrolled customer ceases to have an  
2 active service with the vendor of portable electronics; or

3 (b) Without prior notice if an enrolled customer exhausts the  
4 aggregate limit of liability, if any, under the terms of the portable  
5 electronics insurance policy and the insurer sends notice of  
6 termination to the enrolled customer within thirty calendar days after  
7 exhaustion of the limit. However, if notice is not timely sent,  
8 coverage continues notwithstanding the aggregate limit of liability  
9 until the insurer sends notice of termination to the enrolled customer.

10 (8) If a policy of portable electronics insurance is being  
11 cancelled or terminated by the insurer, the notice must include the  
12 insurer's actual reason for cancellation or termination.

13 (9) When a portable electronics insurance policy is terminated by  
14 a policyholder, the insurer must mail or deliver written notice to each  
15 enrolled customer advising the enrolled customer of the termination of  
16 the policy and the effective date of termination. The written notice  
17 must be mailed or delivered to the enrolled customer at least thirty  
18 days prior to the termination. The written notice must include the  
19 actual reason for the termination. However, if the policyholder is a  
20 vendor licensed as a specialty producer pursuant to RCW 48.120.010, the  
21 notice required by this subsection must be mailed or delivered by the  
22 vendor.

23 (10) Any notice or correspondence with respect to a policy of  
24 portable electronics insurance required under this section or otherwise  
25 required by law must be in writing. Notice or correspondence may be  
26 sent either by mail or by electronic means. If the notice or  
27 correspondence is mailed, it must be sent to the vendor of portable  
28 electronics at the vendor's mailing address specified for that purpose  
29 and to its affected enrolled customers' last known mailing addresses on  
30 file with the insurer.

31 The insurer or vendor of portable electronics must maintain proof  
32 of mailing in a form authorized or accepted by the United States postal  
33 service or other commercial mail delivery service. If a notice or  
34 correspondence is sent by electronic means, it must be sent to the  
35 vendor of portable electronics at the vendor's electronic mail address  
36 specified for that purpose and to its affected enrolled customers' last  
37 known electronic mail address as provided by each enrolled customer to  
38 the insurer or vendor of portable electronics, as the case may be.

1 For purposes of this subsection, an enrolled customer's provision  
2 of an electronic mail address to the insurer, supervising person, or  
3 vendor of portable electronics means that the enrolled customer  
4 consents to receive notices and correspondence by electronic mail as  
5 long as a disclosure to that effect is provided to the consumer at the  
6 time the consumer provides an electronic mail address. The insurer or  
7 vendor of portable electronics, as the case may be, must maintain proof  
8 that the notice or correspondence was sent.

9 (11) Notice or correspondence required by this section or otherwise  
10 required by law may be sent by the supervising person appointed by the  
11 insurer on behalf of an insurer or a vendor.

12 NEW SECTION. **Sec. 9.** Section 5 of this act expires July 1, 2015.

13 NEW SECTION. **Sec. 10.** Section 6 of this act takes effect July 1,  
14 2015.

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