## SECOND SUBSTITUTE SENATE BILL 5315

State of Washington 67th Legislature 2021 Regular Session

 $\boldsymbol{By}$  Senate Ways & Means (originally sponsored by Senators Mullet and Dozier)

READ FIRST TIME 02/17/21.

AN ACT Relating to captive insurance; amending RCW 48.14.020, 48.14.095, 48.15.160, 82.04.320, and 48.14.090; adding a new chapter to Title 48 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

6 NEW SECTION. Sec. 1. The legislature finds that creating a 7 framework for Washington private entities and public institutions of higher education to manage their risks through captive insurers will 8 facilitate the growth and safety of those entities and protect the 9 10 public interest. The legislature further finds that captive insurance 11 promotes prudent risk management and provides access to insurance and 12 reinsurance markets that may not be available to these Washington 13 entities otherwise. The legislature believes that encouraging the use 14 of captive insurance will support those who rely upon the strength 15 and stability of employers in this state.

The legislature does not intend by this act to make Washington a captive domicile state. Rather, the legislature is establishing a framework for registration by captive insurers that insure Washington-based entities and are licensed by the jurisdictions in which they are domiciled.

1 <u>NEW SECTION.</u> Sec. 2. The definitions in this section apply 2 throughout this chapter unless the context clearly requires 3 otherwise.

4 (1) "Affiliate" means an entity directly or indirectly 5 controlling, controlled by, or under common control with another 6 entity, such as a parent or a subsidiary corporation. "Affiliate" 7 also means any person that holds an insured interest because that 8 person has or had an employment or sales contract with an insured 9 person.

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(2) "Captive owner" means one of the following:

(a) An entity that is organized under Title 23B, 24, or 25 RCW,
or analogous provisions of the law of another state or territory; or
(b) A public institution of higher education.

14 (3) "Casualty insurance" has the same meaning as "general 15 casualty insurance" as defined in RCW 48.11.070.

16 (4) "Control" means possession of the power to direct the 17 management and policies of an entity through ownership of voting 18 securities, by contract, or otherwise.

19 (5) "Eligible captive insurer" means an insurance company with 20 the following characteristics:

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(a) It is wholly or partially owned by a captive owner;

(b) It insures risks of the captive owner, the captive owner's other affiliates, or both;

24 (c) One or more of its insureds have their principal place of 25 business in Washington;

(d) It has assets that exceed its liabilities by at least \$1,000,000 and has the ability to pay its debts as they come due, both as verified by audited financial statements prepared by an independent certified accountant; and

30 (e) It is licensed as a captive insurer by the jurisdiction in 31 which it is domiciled.

32 (6) "Property insurance" has the same meaning as in RCW 33 48.11.040.

34 (7) "Public institution of higher education" means an institution35 of higher education as defined in RCW 28B.10.016.

36 <u>NEW SECTION.</u> Sec. 3. (1) Within 120 days after the effective 37 date of this section or, if later, within 120 days after first 38 issuing a policy that covers Washington risks, an entity acting as an 39 eligible captive insurer must register with the commissioner.

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1 (2) The commissioner will approve an eligible captive insurer's 2 registration if the commissioner determines that the eligible captive 3 insurer has sufficiently demonstrated:

4 (a) (i) That its assets exceed its liabilities by at least
5 \$1,000,000 and it has the ability to pay its debts as they come due,
6 both as verified by audited financial statements prepared by an
7 independent certified accountant; and

8 (ii) That it is in good standing in its jurisdiction of domicile;9 and

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(b) The eligible captive insurer has paid a fee of \$2,500.

11 (3) The commissioner may request additional documentation and 12 information if needed to show that these requirements have been met.

13 (4) The commissioner may deny registration for any eligible 14 captive insurer that fails to meet the requirements in subsections 15 (2) and (3) of this section.

16 (5) A registered captive insurer may renew its certificate of 17 registration for successive periods of 12 months each by, for each 18 period, meeting the requirements of subsections (2)(a) and (3) of 19 this section and paying a renewal fee in an amount set by the 20 commissioner not to exceed \$2,500.

(6) A registered eligible captive insurer may provide only property and casualty insurance and may provide such insurance to a captive owner, to the captive owner's other affiliates, or both. A registered eligible captive insurer may assume risks from other insurers as a reinsurer without regard to the limitations in the preceding sentence.

(7) A registered eligible captive insurer may insure risks of its
 affiliates and obtain or provide reinsurance for ceded or assumed
 risks insured in this state or elsewhere.

30 NEW SECTION. Sec. 4. (1) On or before the first day of March of each year, a registered eligible captive insurer must remit to the 31 state treasurer through the commissioner a tax in the amount of two 32 percent of the premiums, exclusive of returned premiums and sums 33 collected to cover federal and state taxes and examination fees, for 34 35 insurance directly procured by and provided to its parent or another affiliate for Washington risks during the preceding calendar year. 36 The tax when collected must be credited to the general fund. 37

38 (2) For the purposes of this section, "Washington risks" means 39 the share of risk covered by the premiums that is allocable to this

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state, based on where the underlying risks are located or where the 1 losses or injuries giving rise to covered claims arise. A registered 2 eligible captive insurer may use any reasonable method of determining 3 such an allocation, including actuarial analysis or use of a proxy 4 such as sales, property value, or payroll. Whether paid directly or 5 6 by reimbursement, neither the timing nor the nature of a captive insurer's payment may be deemed to reflect, create, or constitute 7 Washington risks. 8

9 (3) The registered eligible captive insurer must share its 10 methodology and relevant analysis in determining its allocation with 11 the commissioner.

12 (4) A registered eligible captive insurer is not liable for 13 premium tax on moneys received as a reinsurer or on insurance placed 14 through a surplus lines broker or other intermediary that collects 15 and remits premium tax.

16 (5) If a registered eligible captive insurer fails to remit the 17 tax provided by this section by the last day of the month in which 18 the tax becomes due, the registered eligible captive insurer must pay the tax and the penalties and interest provided in RCW 48.14.060. The 19 tax may be collected by distraint, or the tax and fine may be 20 21 recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must 22 be paid to the state treasurer and credited to the general fund. 23

(6) Taxes on premiums are due under this section from an eligible 24 25 captive insurer for any period after January 1, 2011, if not previously remitted to the commissioner, and further provided that 26 all such taxes must be limited to an eligible captive insurer's 27 Washington risks. Taxes due under this subsection for periods before 28 29 July 1, 2021, are not subject to the penalties or interest provided in RCW 48.14.060. For periods beginning July 1, 2021, a registered 30 31 eligible captive insurer is subject to the sanctions in subsection 32 (5) of this section.

33 (7) Taxes on premiums may not be imposed on or collected from an 34 eligible captive insurer affiliated with a public institution of 35 higher education.

36 <u>NEW SECTION.</u> Sec. 5. (1) The commissioner is authorized to make 37 use of any of the powers established under Title 48 RCW to enforce 38 the laws of this state. This includes, but is not limited to, the 39 commissioner's administrative authority to investigate, issue

1 subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to 2 any 3 investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the 4 state. An eligible captive insurer that violates any provision of 5 6 this chapter after its effective date will be subject to the fines and penalties applicable to authorized insurers generally, including 7 revocation of its registration, suspension of registration, and 8 refusal to renew registration. 9

10 (2) An eligible captive insurer that fails to register under this 11 act is acting as an unlawful, unauthorized insurer and is subject to 12 the fines and penalties applicable to unlawful, unauthorized insurers 13 generally.

14 <u>NEW SECTION.</u> Sec. 6. The commissioner may adopt rules as 15 necessary to implement this act.

16 Sec. 7. RCW 48.14.020 and 2016 c 133 s 1 are each amended to 17 read as follows:

(1) Subject to other provisions of this chapter, each authorized 18 19 insurer except title insurers and registered eligible captive insurers as defined in section 2 of this act shall on or before the 20 21 first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in 22 23 subsection (3) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the 24 amount of reductions in premiums allowed to holders of industrial 25 26 life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 27 during the preceding calendar year other than ocean marine and 28 29 foreign trade insurances, after deducting premiums paid to 30 policyholders as returned premiums, upon risks or property resident, 31 situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for 32 basis consistent with the basis required by the annual statement. For 33 the purposes of this section the consideration received by an insurer 34 for the granting of an annuity shall not be deemed to be a premium. 35

36 (2)(a) The taxes imposed in this section do not apply to amounts 37 received by any life and disability insurer for health care services 38 included within the definition of practice of dentistry under RCW

1 18.32.020 except amounts received for pediatric oral services that 2 qualify as coverage for the minimum essential coverage requirement 3 under P.L. 111-148 (2010), as amended, and for stand-alone family 4 dental plans as defined in RCW 43.71.080(4)(a), only when offered in 5 the individual market, as defined in RCW 48.43.005((<del>(27)</del>)), or to a 6 small group, as defined in RCW 48.43.005((<del>(33)</del>)).

7 (b) Beginning January 1, 2014, moneys collected for premiums 8 written on qualified health benefit plans and qualified dental plans 9 offered through the health benefit exchange under chapter 43.71 RCW 10 must be deposited in the health benefit exchange account under RCW 11 43.71.060.

12 (3) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire 13 14 premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless 15 16 of the length of term for which such policies are written, such tax 17 shall be in the amount of two percent of the gross amount of such 18 premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-19 first day of December next preceding, less the unused or unabsorbed 20 21 portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in 22 part payment of any renewal premiums or premium deposits on one-year 23 24 policies expiring during such year.

25 (4) Each authorized insurer shall with respect to all ocean 26 marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day 27 of March of each year pay to the state treasurer through the 28 commissioner's office a tax of ninety-five one-hundredths of one 29 percent on its gross underwriting profit. Such gross underwriting 30 31 profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) 32 on such ocean marine and foreign trade insurance contracts the net 33 losses paid (i.e., gross losses paid less salvage and recoveries on 34 reinsurance ceded) during such calendar year under such contracts. In 35 36 the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax 37 prescribed by this subsection, the amounts refunded, or paid as 38 39 participation dividends, by such insurers to the holders of such 40 contracts.

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1 (5) The state does hereby preempt the field of imposing excise or 2 privilege taxes upon insurers or their appointed insurance producers, 3 other than title insurers, and no county, city, town or other 4 municipal subdivision shall have the right to impose any such taxes 5 upon such insurers or these insurance producers.

6 (6) If an authorized insurer collects or receives any such 7 premiums on account of policies in force in this state which were 8 originally issued by another insurer and which other insurer is not 9 authorized to transact insurance in this state on its own account, 10 such collecting insurer shall be liable for and shall pay the tax on 11 such premiums.

12 Sec. 8. RCW 48.14.095 and 2008 c 217 s 8 are each amended to 13 read as follows:

14 (1) This section applies to any insurer or taxpayer, as defined 15 in RCW 48.14.0201, violating or failing to comply with RCW 16 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or 17 48.46.027(1).

18 (2) Except as provided in subsections (7) and (8) of this 19 section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers 20 or taxpayers identified in subsection (1) of this section.

(3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

27 (4) In determining the amount of taxable premiums under 28 subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of 29 30 another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are 31 considered to be written on risks or property resident, situated, or 32 to be performed in this state, or for health care services to be 33 provided to enrolled participants residing in this state. 34

35 (5) Insurance on risks or property resident, situated, or to be 36 performed in this state, or health coverage for the provision of 37 health care services for residents of this state, is considered to be 38 insurance procured, continued, renewed, or performed in this state,

1 regardless of the location from which the application is made, the 2 negotiations are conducted, or the premiums are remitted.

3 (6) Premiums on risks or exposures that are properly allocated to
4 federal waters or international waters or under the jurisdiction of a
5 foreign government are not taxable by this state.

6 (7) This section does not apply to premiums on insurance procured 7 by a licensed surplus line broker under chapter 48.15 RCW.

8 (8) This section does not apply to premiums on insurance that is 9 issued by a registered eligible captive insurer under chapter 48.---10 RCW (the new chapter created in section 12 of this act).

11 Sec. 9. RCW 48.15.160 and 2008 c 217 s 11 are each amended to 12 read as follows:

(1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance, to insurance issued by a registered eligible captive insurer under chapter 48.--- RCW (the new chapter created in section 12 of this act), or to the following insurances when so placed by licensed insurance producers of this state:

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(a) Ocean marine and foreign trade insurances.

20 (b) Insurance on subjects located, resident, or to be performed 21 wholly outside of this state, or on vehicles or aircraft owned and 22 principally garaged outside this state.

23 (c) Insurance on operations of railroads engaged in 24 transportation in interstate commerce and their property used in such 25 operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Insurance producers so placing any such insurance with an 31 unauthorized insurer shall keep a full and true record of each such 32 coverage in detail as required of surplus line insurance under this 33 chapter and shall meet the requirements imposed upon a surplus line 34 broker pursuant to RCW 48.15.090 and any regulations adopted 35 thereunder. The record shall be preserved for not less than five 36 years from the effective date of the insurance and shall be kept 37 38 available in this state and open to the examination of the commissioner. The insurance producer shall furnish to the 39

1 commissioner at the commissioner's request and on forms as designated 2 and furnished by him or her a report of all such coverages so placed 3 in a designated calendar year.

4 Sec. 10. RCW 82.04.320 and 1961 c 15 s 82.04.320 are each 5 amended to read as follows:

6 ((This)) (1) Except as otherwise provided in this section, this
7 chapter ((shall)) does not apply to any person in respect to
8 insurance business upon which a tax based on gross premiums is paid
9 to the state((: PROVIDED, That the)).

10 <u>(2) The</u> provisions of this section ((shall)) <u>do</u> not exempt any 11 person engaging in the business of representing any insurance 12 company, whether as general or local agent, or acting as broker for 13 such companies((: <u>PROVIDED FURTHER</u>, That the)).

14 <u>(3) The</u> provisions of this section ((shall)) <u>do</u> not exempt any 15 bonding company from tax with respect to gross income derived from 16 the completion of any contract as to which it is a surety, or as to 17 any liability as successor to the liability of the defaulting 18 contractor.

19 <u>(4) For purposes of this section, for periods preceding the</u> 20 <u>effective date of this section, eligible captive insurers as defined</u> 21 <u>in section 2 of this act are deemed, in respect to their insurance</u> 22 <u>business, to have paid a tax on gross premiums to the state.</u>

(5) Eligible captive insurers affiliated with a public institution of higher education that are exempt from paying a premium tax under section 4 of this act are exempt from the tax imposed by this chapter in respect to their insurance business. For purposes of this subsection (5), the definitions in section 2 of this act apply.

28 Sec. 11. RCW 48.14.090 and 2009 c 161 s 4 are each amended to 29 read as follows:

30 In determining the amount of direct premium taxable in this state other than for policies issued by an eligible captive insurer as 31 defined in section 2 of this act, all such premiums written, 32 procured, or received in this state shall be deemed written upon 33 34 risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned 35 36 and reported as taxable premiums of any other state or states. For 37 tax purposes, the reporting of premiums shall be on a written basis

1 or on a paid-for basis consistent with the basis required by the 2 annual statement.

3 <u>NEW SECTION.</u> Sec. 12. Sections 1 through 6 of this act 4 constitute a new chapter in Title 48 RCW.

5 <u>NEW SECTION.</u> Sec. 13. If any provision of this act or its 6 application to any person or circumstance is held invalid, the 7 remainder of the act or the application of the provision to other 8 persons or circumstances is not affected.

9 <u>NEW SECTION.</u> Sec. 14. Sections 8 through 11 of this act apply 10 both retroactively and prospectively.

11 <u>NEW SECTION.</u> Sec. 15. This act is necessary for the immediate 12 preservation of the public peace, health, or safety, or support of 13 the state government and its existing public institutions, and takes 14 effect immediately.

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