

reason of the death of the deceased spouse in the sum of ~~((ten))~~ fifteen thousand dollars, or more, then the award of property in addition to the homestead, where the homestead is of less than ~~((ten))~~ fifteen thousand dollars in value, shall lie in the discretion of the court, and that whether there shall be an award in addition to the homestead and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable, but not in excess of the award provided herein.

NEW SECTION. Sec. 5. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 12, 1971.

Passed the House March 20, 1971.

Approved by the Governor March 29, 1971.

Filed in Office of Secretary of State March 29, 1971.

CHAPTER 13

[Engrossed Senate Bill No. 380]

INSURANCE--

DISABILITY, CHIROPRACTIC SERVICES--

HOLDING COMPANIES--

REQUIRED INVESTMENTS

AN ACT Relating to insurance; amending section .13.26, chapter 79, Laws of 1947 and RCW 48.13.260; adding new sections to chapter 79, Laws of 1947 and a new chapter to Title 48 RCW; adding a new section to chapter 48.20 RCW; and adding a new section to chapter 48.21 RCW.

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

NEW SECTION. Section 1. There is added to chapter 48.20 RCW a new section to read as follows:

Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and

procedural to the extent they do not impair the obligation of any existing contract.

NEW SECTION. Sec. 2. There is added to chapter 48.21 RCW a new section to read as follows:

Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract.

NEW SECTION. Sec. 3. As used in this 1971 act, unless the context otherwise requires:

(1) "Affiliate" of, or a person "affiliated" with, a specific person, shall mean a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Control", including "controlling", "controlled by", and "under common control with", shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not exist in fact.

(3) "Insurance holding company system" shall consist of two or more affiliated persons, one or more of which is an insurer.

(4) "Insurer" shall have the same meaning given it in RCW 48.01.050.

(5) "Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(6) "Subsidiary" of a specified person shall mean an affiliate controlled by such person directly, or indirectly through one or more

intermediaries.

(7) "Commissioner" shall mean the insurance commissioner.

NEW SECTION. Sec. 4. No person other than the issuer or an affiliate of the issuer shall make a tender offer for a request or invitation for tenders of, or agreement to exchange securities for or otherwise acquire, any voting security or any security convertible into a voting security of a domestic insurer or of any other person controlling a domestic insurer if, as a result of the consummation thereof, the person making such tender offer, request or agreement, would directly or indirectly, acquire actual control of such insurer, unless:

(1) Such person has filed with the commissioner a statement containing such of the following information, and such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders:

(a) The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger, or other acquisition of control are to be effected;

(b) The source and amount of the funds or other consideration used or to be used in making the purchases or in effecting the exchange, merger or other acquisition of control, and, if any part of such funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger, or other acquisition of control, a description of the transaction and the names of the parties thereto;

(c) Any plans or proposals which such persons may have to liquidate such insurer, to sell its assets or merge it with any person, or to make any other major change in its business or corporate structure or management;

(d) The amount of each class of voting securities, or securities which may be converted into voting securities, of such insurer or such controlling person, which are beneficially owned, and the amount of each class of voting securities or securities which may be converted into voting securities of such insurer or such controlling person concerning which there is a right to acquire beneficial ownership, by each such person and by each such affiliate;

(e) Information as to any contracts, arrangements or understandings with any person with respect to any securities of such insurer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the details

thereof; and

(f) A copy of any such agreement, and any amendments thereto, to exchange or otherwise acquire securities or to merge with or otherwise to acquire control of such insurer; and

(2) The time for disapproval, as provided in section 7 of this 1971 amendatory act, including any agreed extensions, has elapsed or approval has been given by the commissioner.

NEW SECTION. Sec. 5. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for actual control of a domestic insurer made by or on behalf of any such person shall contain such of the information specified in section 4 of this 1971 amendatory act as the commissioner may prescribe, and shall be filed with the commissioner at least ten days prior to the time such material is first published or sent or given to security holders. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and stockholders, and shall be filed with the commissioner at least ten days prior to the time copies of such material are first published or sent or given to security holders.

NEW SECTION. Sec. 6. If the person required to file the statement referred to in section 4 of this 1971 amendatory act is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by section 4 of this 1971 amendatory act shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If the person required to file the statement referred to in section 4 of this 1971 amendatory act is a corporation, the commissioner may require that the information called for by section 4 of this 1971 amendatory act shall be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding securities of such corporation.

NEW SECTION. Sec. 7. (1) In the absence of approval by the commissioner the purchases, exchanges, mergers or other acquisitions of control referred to in section 4 of this 1971 amendatory act may be made unless the commissioner, within twenty days after the statement required by section 4 of this 1971 amendatory act has been filed with him, disapproves the purchases, exchanges, mergers or other acquisitions of control. The commissioner may disapprove any such transaction within twenty days after such filing if he finds

that:

(a) After the change of control the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance of its last certificate of authority to do the insurance business which it intends to transact in this state;

(b) The effect of the purchases, exchanges, mergers, or other acquisitions of control may be substantially to lessen competition in insurance in this state or tend to create a monopoly therein; or would violate the laws of this state or the United States relating to monopolies or restraint of trade;

(c) The financial condition of an acquiring person is such as would jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or, in the case of an acquisition of control, the interest of any remaining shareholders who are unaffiliated with the acquiring person:

(d) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair or prejudicial to policyholders; or

(e) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders, shareholders, or the public to permit them to do so.

(2) The provisions of sections 4 through 7 of this 1971 amendatory act apply to any change of control if and to the extent that the commissioner, by rule or regulation or by order, shall exempt the same from the provisions of such sections as not comprehended within the purpose of this section.

NEW SECTION. Sec. 8. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except that such requirements shall not apply to a foreign insurer domiciled in a jurisdiction which has adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this 1971 amendatory act. Any insurer which is subject to registration under the provisions of this section shall register within sixty days after the effective date of this act or fifteen days after it becomes subject to registration, whichever is later, unless the commissioner, for good cause shown, extends the time for registration, and then within such extended time. Nothing in this section shall be construed to prohibit the commissioner from requesting any authorized insurer, which is a member of a holding company system, which is not subject to registration under the

provisions of this section for a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its state of domicile.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The following transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements, based upon generally accepted accounting principles, and

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company; and

(c) Other matters concerning transactions between a registered insurer and any affiliate as may be required by the commissioner.

(3) No information need be disclosed on the registration statement filed pursuant to the provisions of this section if such information is not material for the purposes of this 1971 amendatory act. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one half of one percent or less of an insurer's admitted assets as of December 31 immediately preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on forms provided by the commissioner on or before the fifteenth day of the following month in which it learns of each such change or addition.

(5) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(6) Two or more affiliated insurers subject to registration hereunder may file a consolidated registration statement or

consolidated reports amending their respective consolidated statements or their individual registration statements so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(7) The commissioner may allow any insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section, and to file all information and material required to be filed under the provisions of this 1971 amendatory act.

(8) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof.

(9) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support such disallowance.

NEW SECTION. Sec. 9. Material transactions by registered insurers with their affiliates occurring after the effective date of this 1971 amendatory act shall be subject to the following standards:

- (1) The terms shall be fair and reasonable;
- (2) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and
- (3) The insurer's surplus to policyholders following any dividends or distributions to shareholders or affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

NEW SECTION. Sec. 10. For purposes of this 1971 amendatory act, in determining whether an insurer's surplus to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital

and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus to policyholders;

(8) The surplus to policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in subsidiaries.

NEW SECTION. Sec. 11. No insurer subject to registration under the provisions of this 1971 amendatory act shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until sixty days after the commissioner has received notice of the intent to declare such dividend or distribution and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such sixty-day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding twelve months, exceeds the greater of ten percent of such insurer's surplus to policyholders as of December 31 of the year immediately preceding, or the net gain from operations of such insurer if such insurer is a life insurer, or the net investment income if such insurer is not a life insurer, for the twelve-month period ending December 31 of the year immediately preceding. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon stockholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the thirty-day period referred to above. V.

NEW SECTION. Sec. 12. (1) Subject to the limitations contained in this section and in addition to the powers which the commissioner has under chapter 48.03 RCW, relating to the examination of insurers, the commissioner shall also have the power to order any

insurer registered under the provisions of this 1971 amendatory act to produce such records, books, or papers in the possession of the insurer or affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between insurer and affiliates. Such books, records, papers and information shall be examined in the manner prescribed in chapter 48.03 RCW relating to the time, place and expense of examination.

(2) The purposes of the examination, under the provisions of subsection (1) of this section, shall be to verify the registration statement and any addition or amendment thereto made pursuant to the provisions of this 1971 amendatory act.

NEW SECTION. Sec. 13. Every report made pursuant to the provisions of this 1971 amendatory act, including every report of examination or investigation, and any duly authenticated copy thereof in the possession of any person subject to the provisions of this act, shall be a confidential communication, shall not be subject to subpoena and shall not be made public by the commissioner without the prior written consent of the insurer or unless the commissioner determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may make a public record or publish all or any part thereof in such manner as he may deem appropriate.

NEW SECTION. Sec. 14. Any person obtaining or attempting to obtain control of a domestic insurer shall by such act subject such person to the jurisdiction of the courts of this state.

NEW SECTION. Sec. 15. The commissioner may, upon notice and opportunity for all interested parties to be heard, issue such reasonable rules, regulations and orders as shall be necessary to carry out and effectuate provisions of this 1971 amendatory act.

Sec. 16. Section .13.26, chapter 79, Laws of 1947 and RCW 48.13.260 are each amended to read as follows:

(1) An insurer shall invest and keep invested its funds aggregating in amount, if a stock insurer, not less than one hundred percent of its minimum required capital, or if a mutual or reciprocal insurer, not less than one hundred percent of its required minimum surplus, in cash or investments eligible in accordance with RCW 48.13.040 (public obligations), and in mortgage loans on real property located within this state, pursuant to RCW 48.13.110.

(2) In addition to the investments required by subsection (1) of this section, an insurer shall invest and keep invested its funds aggregating not less than one hundred percent of its reserves required by this code in cash or premiums in course of collection or in investments eligible in accordance with the following sections: RCW 48.13.040 (public obligations), 48.13.050 (corporate

obligations), 48.13.080 (preferred or guaranteed stocks), 48.13.090 (trustees' or receivers' obligations), 48.13.100 (equipment trust certificates), 48.13.110 (mortgages, loans and contracts), 48.13.150 (auxiliary chattel mortgages), 48.13.160 (real property, home office building, etc.), 48.13.180 (foreign securities), 48.13.190 (policy loans), 48.13.200 (savings and share accounts), 48.13.220 (common stocks), 48.13.230 (collateral loans), 48.13.250 (special consent investments).

(3) This section shall not apply to title insurers nor to mutual insurers on the assessment premium plan.

NEW SECTION. Sec. 17. If any provision of this 1971 amendatory act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this 1971 amendatory act which can be given effect without the invalid provisions or application and for this purpose the provisions of this 1971 amendatory act are separable.

NEW SECTION. Sec. 18. Sections 3 through 15 and section 17 shall be added to chapter 79, Laws of 1947 and shall constitute a new chapter in Title 48 RCW.

Passed the Senate March 19, 1971.

Passed the House March 16, 1971.

Approved by the Governor March 29, 1971, with the exception of an item in Section 11 which is vetoed.

Filed in Office of Secretary of State March 31, 1971.

Note: Governor's explanation of partial veto is as follows:

"...This bill adopts a comprehensive scheme for the regulation of insurance holding company systems. Section 11 of this bill requires that insurers notify the Insurance Commissioner at least sixty days prior to making certain extraordinary dividends or distributions to stockholders. Insurers may, by the last sentence of this section, declare such dividends conditional upon the Commissioner's approval "within the thirty-day period referred to above."

Clearly this is a drafting error in that the period referred to earlier in this section is a sixty day period. A veto of the words, "thirty days", will cure this inconsistency with no change in substance.

With the exception of the item in section 11, the remainder of the bill is approved."