

Multiple Agency Fiscal Note Summary

Bill Number: 2493 S HB	Title: Captive insurance
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Estimated Cash Receipts

Agency Name	2019-21		2021-23		2023-25	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	Non-zero but indeterminate cost and/or savings. Please see discussion.					
Office of Insurance Commissioner	2,960,000	2,960,000	93,408,000	93,408,000	79,351,000	79,351,000
Total \$	2,960,000	2,960,000	93,408,000	93,408,000	79,351,000	79,351,000

Estimated Operating Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	1.6	0	469,450	1.4	0	424,196	1.4	0	408,990
Total \$	1.6	0	469,450	1.4	0	424,196	1.4	0	408,990

Estimated Capital Budget Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

NONE

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Prepared by: Jason Brown, OFM	Phone: (360) 902-0539	Date Published: Final 2/13/2020
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Department of Revenue Fiscal Note

Bill Number: 2493 S HB	Title: Captive insurance	Agency: 140-Department of Revenue
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☒ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Meghan Morris	Phone: 360-786-7119	Date: 02/09/2020
Agency Preparation: Tyler McLeod	Phone: 360-534-1531	Date: 02/10/2020
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 02/10/2020
OFM Review: Ramona Nabors	Phone: (360) 902-0547	Date: 02/11/2020

Request # 2493-2-1

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in SHB 2493 (H-4691.1), 2020 Legislative Session.

CURRENT LAW

Captive insurers are not specifically addressed in Washington state statute at this time. When any insurer pays the insurance premiums tax, RCW 82.04.320 exempts those amounts from the business and occupation (B&O) tax.

COMPARISON OF HB 2493 (H-3783.1) WITH SHB 2493 (H-4691.1)

In addition to the \$2,500 tax imposed in HB 2493 (H-3783.1), SHB 2493 (H-4691.1) imposes an insurance premiums tax on premiums paid by exempt commercial purchasers to unauthorized insurers and a premiums tax on premiums received by captive insurers. It also exempts amounts on which exempt commercial purchasers and captive insurers have paid premiums tax from the B&O tax.

PROPOSAL

This proposal imposes an insurance premiums tax on premiums paid by exempt commercial purchasers to unauthorized insurers and a premiums tax on premiums received by captive insurers. It also exempts amounts on which exempt commercial purchasers and captive insurers have paid premiums tax from the B&O tax. The bill applies retroactively and prospectively.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

The revenue impact of this bill could be substantial, but is indeterminate since insufficient data is available on the value of taxable transactions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The Department of Revenue will not incur any costs with the implementation of this legislation.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

NONE

III. B - Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

NONE

None.

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 2493 S HB	Title: Captive insurance	Agency: 160-Office of Insurance Commissioner
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2020	FY 2021	2019-21	2021-23	2023-25
General Fund-State 001-1		2,960,000	2,960,000	93,408,000	79,351,000
Total \$		2,960,000	2,960,000	93,408,000	79,351,000

Estimated Operating Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	0.0	3.2	1.6	1.4	1.4
Account					
Insurance Commissioners Regulatory Account-State 138-1	0	469,450	469,450	424,196	408,990
Total \$	0	469,450	469,450	424,196	408,990

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

Legislative Contact: Meghan Morris	Phone: 360-786-7119	Date: 02/09/2020
Agency Preparation: Scott Bird	Phone: (360) 725-7169	Date: 02/11/2020
Agency Approval: Bryon Welch	Phone: 360-725-7037	Date: 02/11/2020
OFM Review: Jason Brown	Phone: (360) 902-0539	Date: 02/12/2020

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 3(2) requires that, prior to independently procuring insurance in this state, a person must establish that they qualify as an exempt commercial purchaser (ECP) by filing a form, in the format prescribed by the Office of Insurance Commissioner (OIC), attesting that the person qualifies as an ECP and providing additional information as required by the OIC.

Section 3(3) requires ECPs whose home state is WA state and who procure, continue, or renew insurance with an unauthorized insurer, other than insurance lawfully procured through a surplus lines broker, to file a report with the OIC, in a form prescribed by the OIC, within 60 days after the date the insurance was bound or the effective date of the insurance, whichever is later.

Section 3(4) permits an ECP to only independently procure unauthorized insurance that is properly classified as property insurance under RCW 48.11.040 or general casualty insurance under RCW 48.11.070.

Section 4, 5 and 8(1) requires each ECP and captive insurer to file a statement of all independently procured insurance transacted during the preceding calendar year and pay the associated insurance premium tax by March 1st of each year.

Section 6(1) subjects ECPs to a \$1,000 fine for each report, as required by section 3(3), that is not timely filed with the commissioner.

Section 6(2) and 8(3) requires ECPs and captive insurers to pay the penalties and interest provided in RCW 48.14.060 if they fail to file the annual statement or remit the tax provided by section 5 and 8(1) by the last day of the month in which the tax becomes due.

Section 7(1) requires that, within 120 days after the effective date of this section or, if later, within 120 days after first issuing a policy that covers WA risks, a WA captive insurer must register with the Office of Insurance Commissioner (OIC). Upon a captive furnishing evidence of good standing in its state of domicile and paying a tax (registration fee) of \$2,500, a captive insurer is entitled to receive a certificate of captive authority as a registered WA captive insurer.

Section 7(2) allows a captive insurer to renew its certificate of captive authority by paying a tax (renewal fee) not to exceed \$2,500 per year.

Section 9 allows the office of insurance commissioner to adopt rules as necessary to implement this act, but such rules must recognize the difference between captive insurance and commercial insurance offered to WA insureds by unrelated companies.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

INSURANCE PREMIUM TAXES:

Section 4, 5 and 8(1), effective January 1, 2021, requires each exempt commercial purchaser (ECP) and captive

insurer to file a statement of all independently procured insurance transacted during the preceding calendar year and pay the associated insurance premium tax by March 1st of each year. While the Office of Insurance Commissioner (OIC) does not have data concerning the number of companies which may utilize independent procurement, the Department of Revenue (DOR) for FY2019, has confirmed there were a total of 2,366 companies with gross income greater than \$50 million per year paying taxes to DOR. If the OIC takes just 25% of those companies, we estimate approximately 592 ECPs/captive insurers ($2,366 \times 25\%$) will directly procure insurance beginning in calendar year (CY) 2021. We estimate an additional 35 ($2,366 \times 1.5\%$) ECPs in CY 2022, an addition 6 ECPs ($2,366 \times .25\%$) in CY 2023 and then assume the number will hold steady at 633 every year thereafter. Illinois, a state that began levying tax against entities like ECPs in 2015, reports an average of \$3 million in premium volume per ECP. If we combine OIC's estimated number of ECPs/captive insurers with the \$3 million average premium volume per year, we estimate the following additional insurance premium tax revenue:

**** Please note:** WA's insurance premium tax requires the following tax prepayments which may result in the premium tax associated with a specific calendar year's premium volume being different than the revenue received in a fiscal year:

- 45% of the previous year's tax liability – Due June 15
- 25% of the previous year's tax liability – Due September 15
- 25% of the previous year's tax liability – Due December 15th
- Tax forms and tax payment "true-up" for the previous year – Due March 1

FY2021: N/A

FY2022: \$51,504,000 (\$1,776,000,000 premium volume in CY2021 (592 ECPs/captive insurers x \$3 million) x 2% premium tax = \$35,520,000 PLUS 45% prepayment of \$15,984,000)

FY2023: \$38,565,000 (based on \$1,881,000,000 of premium volume in CY2022 (627 ECPs/captive insurers x \$3 million) x 2% premium tax = \$37,620,000)

FY2024: \$38,142,000 (based on \$1,899,000,000 of premium volume in CY2023 (633 ECPs/captive insurers x \$3 million) x 2% premium tax = \$37,980,000)

FY2025 and after: \$37,980,000 (based on \$1,899,000,000 of premium volume in CY2024 and after (633 ECPs/captive insurers x \$3 million) x 2% premium tax = \$37,980,000)

PENALTIES/INTEREST/FINES:

Section 6(1) subjects exempt commercial purchasers (ECPs) to a \$1,000 fine for each report that is not timely filed with the Office of Insurance Commissioner (OIC). Based on the OIC's previous years' experience with report compliance on new filings, the OIC expects relatively low compliance with "timely filing" in the first year (50%) with higher compliance (95% to 99%) in following years. Based on comparative 2019 data from Illinois, a state that began levying tax against entities like ECPs in 2015, the OIC assumes each ECP will procure five policies per year resulting in the following potential fines:

FY2021: \$1,480,000 (5 policies x 592 ECPs = 2,960 policies x 50% late filing = 1,480 late filings x \$1,000)

FY2022: \$157,000 (5 policies x 627 ECPs = 3,135 policies x 5% late filing = 157 late filings x \$1,000)

FY2023 and beyond: $\$32,000 (5 \text{ policies} \times 633 \text{ ECPs} = 3,165 \text{ policies} \times 1\% \text{ late filing} = 32 \text{ late filings} \times \$1,000)$.

Section 6(2) and 8(3) requires ECPs and captive insurers to pay the penalties and interest provided in RCW 48.14.060 if they fail to file the annual statement or remit the tax provided by section 5 and 8(1) of this act by the last day of the month in which the tax becomes due. For purposes of this fiscal note, it is assumed that all taxes will be remitted by the due date.

REGISTRATION AND RENEWAL FEES:

Section 7(1) requires that, within 120 days after the effective date of this section, a WA captive insurer must register with the Office of Insurance Commissioner (OIC). Upon a captive furnishing evidence of good standing in its state of domicile and paying a tax (registration fee) of \$2,500, a captive insurer is entitled to receive a certificate of captive authority as a registered WA captive insurer. Section 7(2) allows a captive insurer to renew its certificate of captive authority by paying a tax (renewal fee) not to exceed \$2,500 per year. While the OIC does not have data concerning the number of companies which may utilize independent procurement, the Department of Revenue (DOR) for FY2019, has confirmed there were a total of 2,366 companies with gross income greater than \$50 million per year paying taxes to DOR. If the OIC takes just 25% of the $(2,366 \times 25\%)$, we estimate approximately 592 ECPs/captive insurers will directly procure insurance beginning in fiscal year (FY) 2021. We estimate an additional 35 $(2,366 \times 1.5\%)$, ECPs/captive insurers in FY 2022, an additional 6 $(2,366 \times .25\%)$ in FY 2023 and then assume the number will hold steady at 633 every year thereafter.

FY2021: $\$1,480,000 (592 \text{ registrations} \times \$2,500)$

FY2022: $\$1,567,500 (35 \text{ registrations and } 592 \text{ registration renewals} \times \$2,500)$

FY2023: $\$1,582,500 (6 \text{ registrations and } 627 \text{ registration renewals} \times \$2,500)$

FY2024 and after: $\$1,582,500 (633 \text{ registration renewals} \times \$2,500)$

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Assumptions: The Office of Insurance Commissioner (OIC) assumes Exempt Commercial Purchasers (ECP) and Captive insurers have the same meaning. Because of the need to adopt rules and modify IT systems to accommodate registration, report submittals, and tax and fee collection, it is assumed that entities will be required to register and start reporting beginning in January 2021. OIC estimates that approximately 592 exempt commercial purchasers (ECPs) will transact business in Washington in CY 2021, an additional 35 ECPs will transact business in CY 2022 and an additional 6 ECPs will transact business in CY 2023. For each year thereafter, we assume the number will hold steady at 633 ECPs. Based on Illinois' 2019 data, a state that began levying tax against entities like ECPs in 2015, the OIC assumes each ECP will procure five policies per year.

Section 3(2), effective January 1, 2021, requires that, prior to independently procuring insurance in this state, a person must establish that they qualify as an exempt commercial purchaser (ECP) by filing a form, in the format prescribed by the Office of Insurance Commissioner (OIC), attesting that the person qualifies as an ECP and providing additional information as required by the OIC. It is expected to require approximately 30 minutes per

form, or a total of 296 hours (592 forms x 30 minutes) in FY2021, 18 hours (35 forms x 30 minutes) in FY2022, and 3 hours (6 forms x 30 minutes) each year thereafter of a Functional Program Analyst 4 to review the forms and send letters of registration to the ECPs. If the OIC discovers that a WA company is independently procuring unauthorized insurance without filing a form, investigation will be necessary to determine whether the person qualifies as an exempt commercial purchaser and whether the person's home state is WA. If these two factors are present, OIC will need to take enforcement action. It is expected to take significant resources to encourage compliance. Each year, it is assumed there would be at least 15 investigations, requiring 150 hours of an Investigator 3; 12 enforcement actions, requiring 372 hours of an Insurance Enforcement Specialist and 60 hours of a Paralegal 2. We anticipate 3 hearings a year to address unauthorized activity, requiring 249 hours of an Insurance Enforcement Specialist, 192 hours of a Paralegal 2, and 97 hours of a Presiding Officer.

Section 3(3) requires ECPs whose home state is WA state and who procure, continue, or renew insurance with an unauthorized insurer, other than insurance lawfully procured through a surplus lines broker, to file a report with the OIC, in a form prescribed by the OIC, within 60 days after the date the insurance was bound or the effective date of the insurance, whichever is later. It is expected to require approximately 20 minutes per report, or a total of 987 hours (592 ECPs x 5 reports x 20 minutes) in FY2021, 1,045 hours (627 ECPs x 5 reports x 20 minutes) in FY2022, and 1,055 hours (633 ECPs x 5 reports x 20 minutes) each year thereafter of a Financial Examiner 4 to review the reports and, if necessary, communicate back and forth to clarifying provided information.

Section 4, 5 and 8(1) requires each ECP and captive insurer to file a statement of all exempt commercial purchaser insurance transacted during the preceding calendar year and pay the associated insurance premium tax by March 1st of each year.

Section 6(1) subjects ECPs to a \$1,000 fine for each report, as required by section 3(3), that is not timely filed with the commissioner. In FY 2021, it is expected that 50 percent of the reports will be submitted late requiring 493 hours (2,960 reports x 50%=1,480 late reports x 20 minutes) of a Financial Examiner 4 to prepare an enforcement referral. In FY2022, late submittals are assumed to decrease to 5 percent requiring 52 hours (3,135 reports x 5%=157 late reports x 20 minutes) of a Financial Examiner 4. In FY2023 and thereafter, late submittals are assumed to decrease to 1 percent requiring 11 hours (3,165 reports x 1%=32 late reports x 20 minutes) of a Financial Examiner 4. Processing each referral for enforcement will require a total of 60 minutes per referral or 740 hours (1,480 referrals x 30 minutes) in FY2021, 79 hours (157 referrals x 30 minutes) in FY2022 and 16 hours (32 referrals x 30 minute) each year thereafter of both an Insurance Enforcement Specialist and a Paralegal 2.

Section 6(2) and 8(3) requires ECPs and captive insurers to pay the penalties and interest provided in RCW 48.14.060 if they fail to file the annual statement or remit the tax provided by section 5 by the last day of the month in which the tax becomes due.

Sections 3(2), 4, 5, 6(2), 7(1), and 8 requires the (OIC) to make changes to its Information Technology (IT) systems to enable ECPs and captive insurers to register and renew, report premiums, and pay taxes as well as report and collect penalty fees for those who are past due. The changes to IT systems would include a combination of system configuration changes and software programming enhancements. The OIC's IT staff will implement these changes in-house to ensure that the system changes align with the existing IT infrastructure and technical approaches that OIC uses in its applications and online e-commerce websites. The cost estimate for the system changes and new software development is assumed to be a one-time cost and estimated at 503 hours over 3 months utilizing five IT staff. The cost estimate to implement this bill is based on what it cost the OIC to recently build the fiscal tax screens in ORCA, the agency's new back-office system as well as enhancements to

the existing SIMBA Online system.

Section 9 allows the OIC to adopt rules as necessary to implement this act. WAC 284-15-035 will need to be either revised or eliminated as the current WAC conflicts with this bill and additional clarification associated with rules associated with this new and alternative way to procure insurance will be required. This will require a 'normal' rulemaking process in FY2021.

Ongoing Costs:

Salary, benefits and associated costs for .09 FTE Investigator 3; .39 FTE Insurance Enforcement Specialist; .16 FTE Paralegal 2; .06 FTE Presiding Officer; and .65 FTE Financial Examiner 4.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2020	FY 2021	2019-21	2021-23	2023-25
138-1	Insurance Commissioners Regulatory Account	State	0	469,450	469,450	424,196	408,990
Total \$			0	469,450	469,450	424,196	408,990

III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years		3.2	1.6	1.4	1.4
A-Salaries and Wages		279,839	279,839	253,499	244,502
B-Employee Benefits		95,721	95,721	85,858	82,690
C-Professional Service Contracts					
E-Goods and Other Services		93,890	93,890	84,839	81,798
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	0	469,450	469,450	424,196	408,990

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2020	FY 2021	2019-21	2021-23	2023-25
Financial Examiner 4	99,816		0.9	0.5	0.7	0.7
Functional Program Analyst 4	76,128		0.2	0.1	0.0	
Insurance Enforcement Specialist	87,108		0.8	0.4	0.4	0.4
Investigator 3	72,432		0.1	0.1	0.1	0.1
IT Applications Developer - Journey	94,068		0.1	0.1		
IT Applications Developer - Senior	108,912		0.1	0.1		
IT Architecture - Senior	114,360		0.0	0.0		
IT Business Analyst - Senior	103,584		0.0	0.0		
IT Data Management - Senior	106,308		0.0	0.0		
Paralegal 2	68,892		0.6	0.3	0.2	0.2
Presiding Officer	97,620		0.1	0.0	0.1	0.1
Senior Policy Analyst	91,896		0.2	0.1		
Total FTEs			3.2	1.6	1.4	1.4

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Section 9 allows the OIC to adopt rules as necessary to implement this act. WAC 284-15-035 will need to be either revised or eliminated as the current WAC conflicts with this bill and additional clarification associated with rules associated with this new and alternative way to procure insurance will be required. This will require a ‘normal’ rulemaking process in FY2021.