



Independent Insurance Agents  
& Brokers of Washington

## 2021 State Legislative Wrap-up

On April 25, the Washington State Legislature completed its 105-day virtual legislative session by approving a two-year, \$59 billion budget which included a state capital gains tax, possibly the most significant tax policy change in the state's history. Legislative Democrats used their majorities to pass consequential legislation in a number of issue areas ranging from environmental regulation, police reform, labor and tax policy.

Specific to the P&C industry, legislation to ban the use of credit in insurance died in the Senate before Insurance Commissioner Mike Kriedler moved to ban the practice by using his administrative authority. Bills that would have retroactively allowed business interruption coverage linked to COVID and enabled insurance consumers to seek rate relief from insurers due to extraordinary life circumstances also died.

### Capital Gains Tax – SB 5096

After multiple attempts, our state legislature passed a new capital gains tax. SB 5096 applies a seven-percent tax on gains more than \$250,000. There are exemptions for sales of retirement assets, real estate except for sales made by publicly traded companies, livestock, timberland, auto dealership goodwill and commercial fishing. There is an exemption for qualifying family businesses with annual gross sales below \$10 million.

Debate over the capital gains tax now heads to the courtroom and possibly to the ballot as an initiative to repeal the measure. At the heart of the legal fight is whether the capital gains tax is an excise or an income tax. One lawsuit to overturn the tax has already been filed and another one is expected. The case will make its way to the state Supreme Court, where a decision could provide a legal path to how the state could more broadly tax income in the future.

### Credit Scoring – SB 5010

Commissioner Kriedler sought to ban credit use in insurance because he believes the practice discriminates against people of color and those who live in economically disadvantaged communities who have been hardest hit by the COVID economic downturn. Insurers argued that use of credit is an effective underwriting tool and provides most consumers with favorable rates.

IIABW shared our concerns that if credit use in the state were banned, large national direct writers could continue to use credit in their direct marketing activities as allowed by the federal Fair Credit Reporting Act. IIABW said that companies that use the independent insurance agent sales channel could be disadvantaged.

The bill was amended to ban the use of credit for renewals (unless it improves the customer's rate) but allowed the use of credit for new business. However, Senators and advocates who sought a total ban stuck to an all-or-nothing position and were able to keep the bill from ever getting a final vote on the Senate floor. IIABW believes this bill would have benefited consumers.

### Credit Scoring: Extraordinary Life Circumstances – HB 1351

Legislation that sought to help customers find economic relief from insurers for extraordinary life circumstances died in the House. This measure was supported by IIABW and insurers – but strongly opposed by consumer advocacy group who believed this bill was a weak benefit to consumers who needed the broader relief that was offered by a ban on credit use.

HB 1351 authorized insurers to make reasonable exceptions to insurance rates, rating classifications, company or tier placement, or underwriting rules and guidelines for a consumer whose credit information has been directly influenced by extraordinary life circumstances (ELC). ELCs were defined as a catastrophic event declared by the state or federal government; the death of a spouse, child, or parent; divorce or involuntary interruption of alimony or child support payments; identity theft; involuntary loss of employment for three or more months; overseas military deployment; or any other events determined by the insurer.

#### **Business Interruption Insurance – SB 5351**

Legislation that proposed to make business interruption insurance retroactive for any COVID-related business claims died in the Senate. The insurance industry came out in full force against the bill, pointing out basic problems relating to contract law and explaining how the resulting market chaos would increase premiums and limit availability of coverage.

#### **Captive insurance – SB 5315**

Legislation passed that will apply 2% premium tax on large captive insurers with risks based in the state. The bill is expected to be signed by Governor Inslee. SB 5315 evolved into its current form after the bill died in the 2020 legislature due to strong opposition by the OIC. The bill that passed resulted from six months of negotiations between businesses with captive insurers and the OIC. SB 5315 generates over \$34 million in revenue for the state's two-year budget, mostly due to the collection of past-due taxes.

#### **Long-term forest health – HB 1168**

In a major victory for insurers, the state budget includes \$125 million for wildfire preparedness, prevention and protection activities, and forest health programs as directed by HB 1168. Last year lawmakers targeted insurers and fees on policies as the main funding source for these programs. With strong tax revenues that fueled a record-setting budget, legislators chose instead to support wildfire activities from the state's general operating fund.

#### **Long-Term Care Insurance – HB 1323**

The final version of House Bill 1323 which passed the legislature gives employees until November 1, 2021 to opt out of the long-term care insurance benefit. Rules need to be written before we know which products will qualify for the opt out. Beginning in January 2022, Long-Term Services and Supports (LTSS) will be funded with a \$.58 tax per \$100 of earnings and individuals will have access to a lifetime benefit of \$36,500 starting in January 2025.

#### **Qui Tam – HB 1076**

Legislation that allowed whistleblowers to bring actions on behalf of the state for violations of workplace protections died in the Senate. Known as "qui tam", HB 1076 had significant opposition from businesses who feared unprecedented legal exposure due. The bill also allowed independent contractors to sue an employer if the independent contractor believed they should be classified as an employee.

#### **Data Privacy – SB 5062**

Legislation that gave consumers the right to access, correct, and delete personal data collected by businesses died in the House. It's the third year in a row that the Senate has passed some version of data privacy but failing to obtain the support that was needed to pass the bill. The House sought to include a private right of action for violations that were detailed in the bill, which was a non-starter for businesses that advocated for SB 5062.