

**From:** [Range, Ellen \(OIC\)](#)  
**To:** [Walker, Michael \(OIC\)](#)  
**Subject:** FW: R 2020-12 Captive Insurance (Stakeholder Draft)  
**Date:** Friday, September 10, 2021 10:23:43 AM  
**Attachments:** [image002.jpg](#)

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I'm not officially working today, but I wanted to make sure that you saw these additional comments.

**From:** Mitchell, Robert  
**Sent:** Thursday, September 9, 2021 3:51 PM  
**To:** OIC Rules Coordinator  
**Cc:** Range, Ellen (OIC)  
**Subject:** R 2020-12 Captive Insurance (Stakeholder Draft)

### External Email

Thank you for circulating a Stakeholder Draft of rules to implement S2SB 5315, regarding captive insurance. I appreciate this opportunity to provide input. Reflections on this draft and conversations with affected parties prompt the following comments:

**WAC 284-2XX-110 Purpose.** The captive bill reflects a policy decision by the Legislature not to make Washington a captive domicile state but rather to establish “a framework for registration by captive insurers that insure Washington-based entities and are licensed by the jurisdictions in which they are domiciled.” S2SB 5315, Sec. 1. Because the licensing jurisdiction (i.e., the domicile) principally regulates these insurers, I recommend that the language in the “purpose” section be tweaked to say “the processes and procedures for ~~regulation~~ registration and taxation of captive insurers . . . .”

**WAC 284-2XX-130 Definitions.** This section lists seven defined terms and either defines them or points to where their definitions may be found. Two terms are missing from and should be added to this list: “captive owner” (identified in the definition of “captive insurer” but not itself defined) and “Washington risks.” The definition of “captive owner” can be found in S2SB 5315, Sec. 2(2). “Washington risks” are defined in S2SB 5315, Sec. 4(2).

**WAC 284-2XX-210 Registration.** In subsection (1), I recommend adding the clarifying phrase, “if later,” found in Sec. 3(1) of S2SB 5315.

**WAC 284-2XX-220 Renewal.** The first question raised by this section is the duration of the initial registration. The statute contemplates at least a year. If the first renewal period were to begin July 1, 2022, the initial registration would be good for less than ten months. I recommend, therefore, adding “starting in 2023” at the end of the first sentence in subsection (1). That will permit adequate time to get renewal procedures in place and allow the OIC to focus next year on collecting tax for prior years as well as for 2021.

When the time comes to renew, renewal should be a simpler process than the initial registration. If information provided at the time of initial registration has not changed, the captive insurer should be able to so certify. The focus should be on updating information that may have changed, not starting over. Suggesting that renewal will take four months does not align with the goal of having a simple and straightforward renewal process.

It is also inappropriate to put captive insurers at risk if the OIC is unable to process their renewal applications. This may happen for a variety of reasons. In past years, for example, delays in enacting a biennial budget have led to government shutdowns. If a renewal application is submitted in a timely fashion, there should be a presumption that registration continues absent OIC notice to the

contrary.

Subsection (2) mistakenly conflates renewal of registration with payment of tax for the prior year. The statute addresses these topics in separate sections, and that distinction should be maintained. I recommend that subsection (2) be revised to provide as follows: “Renewal requires that a registered eligible captive insurer continue to meet the eligibility requirements in sections 2 and 3, chapter 281, Laws of 2021, and pay a renewal fee.”

Subsection (5) should be revised to read something like the following: “To assure a timely annual renewal, a registered eligible captive insurer should file its renewal application between March 1st and May 1st. If the OIC notifies a captive insurer that its renewal application has been denied, the eligible captive insurer’s registration will expire effective June 30th and it will have to register anew. Operating without a valid registration in place may also subject a captive insurer to fines and penalties for acting as an unauthorized insurer.”

**WAC 284-2XX-230 Insurance limitations.** In subsection (1), I recommend adding the clarifying phrase, “in Washington,” at the end of the first clause.

Subsection (1)(a) is a bit of a mystery. Why call out medical stop-loss insurance and not mention, say, life insurance as defined in RCW 48.11.020 or title insurance as defined in RCW 48.11.100? I am also concerned about an ambiguity in the current language that could limit the scope of the important caveat in subsection (2): does “the preceding subsection” refer to subsection (1) or subsection (1)(b)? I recommend replacing “the preceding subsection” with “this section.”

**WAC 284-2XX-240 Taxes.** As I noted earlier, the methodology for calculating Washington risks should be shared as part of the tax-reporting process. (If a captive insurer is shutting down and therefore not renewing, doesn’t the OIC want to know the basis for its final tax payment?) I recommend that subsection (4) be revised to read as follows: “As part of its statement of premiums and payment of tax, a registered eligible captive insurer must provide the methodology and analysis used to determine its allocation of Washington risks.”

If any of this is unclear, please feel free to reach out to me. Thank you. Best regards, Rob Mitchell

**Robert B. Mitchell**

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