

RCW 48.02.065 Confidentiality of documents, materials, or other information—Public disclosure. (1) Documents, materials, or other information as described in subsections (5), (6), (7), and (8) of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.56 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and RCW 42.56.400(8) applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, and (iii) agencies of this state, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the

applicable laws of the jurisdiction that is the source of the document, material, or information.

(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination, or in the course of financial analysis or market conduct desk audit, are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.

(7) Documents, materials, or information provided to the commissioner by the federal government related to emergency management, hazard mitigation, and the national flood insurance program are confidential by law and privileged, and are not subject to public disclosure under chapter 42.56 RCW.

(8) Data requested by the commissioner from property and casualty entities regulated by the commissioner for the purpose of understanding and studying insurance market conditions outside the context of market conduct action is confidential by law and privileged and is not subject to public disclosure under chapter 42.56 RCW. Nothing in this section prohibits the commissioner from preparing and publishing reports, analysis, or other documents using the data received from individual property and casualty companies so long as the data in the report is in aggregate form and does not permit the identification of information related to individual companies. Data in the aggregate form are deemed open records available for public inspection. Nothing in this section affects, limits, or amends the commissioner's authority under chapter 48.37 RCW.

(9) (a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under subsection (6) of this section that relate to a financial or market conduct examination undertaken as a result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B RCW.

(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:

(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or

(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.

(10) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the

petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function. [2024 c 123 s 1; 2015 c 122 s 15; 2007 c 126 s 1. Prior: 2005 c 274 s 309; 2005 c 126 s 1; 2001 c 57 s 1.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.