

RCW 48.31B.038 Confidentiality of certain documents, materials, or other information—Permitted uses. (1) Documents, materials, or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RCW 48.31B.035 and all information reported or provided to the commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, and 48.31B.036 are recognized by this state as being proprietary and to contain trade secrets, and are confidential by law and privileged, are not subject to chapter 42.56 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the 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 commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public is served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(a) For purposes of the information reported and provided to the commissioner pursuant to RCW 48.31B.025(13), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the federal reserve board or any United States group-wide supervisor.

(b) For purposes of the information reported and provided to the commissioner pursuant to RCW 48.31B.025(14), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-United States group-wide supervisors.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter is permitted or may be required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the commissioner's duties, 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, including proprietary and trade secret documents and materials, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, with any third-party consultants designated by the commissioner, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in RCW 48.31B.037, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and

has verified in writing the legal authority to maintain confidentiality;

(b) Notwithstanding (a) of this subsection, may only share confidential and privileged documents, material, or information reported pursuant to RCW 48.31B.025(12) with commissioners of states having statutes or rules substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information;

(c) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information, from the national association of insurance commissioners or a third-party consultant designated by the commissioner, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(d) Shall enter into written agreements with the national association of insurance commissioners and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this chapter consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or a third-party consultant designated by the commissioner pursuant to this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal, or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(ii) Specify that ownership of information shared with the national association of insurance commissioners or a third-party consultant designated by the commissioner pursuant to this chapter remains with the commissioner and the national association of insurance commissioners' or third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) Excluding documents, materials, or other information reported pursuant to RCW 48.31B.025(14), prohibit the national association of insurance commissioners or third-party consultant designated by the commissioner from storing the information shared pursuant to chapter 42, Laws of 2024 in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the national association of insurance commissioners or a third-party consultant designated by the commissioner pursuant to this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant designated by the commissioner for disclosure or production; (v) Require the national association of insurance commissioners or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or third-party consultant designated by the commissioner may be required to disclose confidential information

about the insurer shared with the national association of insurance commissioners or a third-party consultant designated by the commissioner pursuant to this chapter; and

(vi) For documents, materials, or other information reporting pursuant to RCW 48.31B.025(14), in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurer.

(4) The sharing of information by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rule making, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall 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.

(6) Documents, materials, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant designated by the commissioner pursuant to this chapter are confidential by law and privileged, are not subject to chapter 42.56 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(7) The group capital calculation and resulting group capital ratio required under RCW 48.31B.025(13) and the liquidity stress test along with its results and supporting disclosures required under RCW 48.31B.025(14) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of chapter 42, Laws of 2024, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement. [2024 c 42 s 3; 2020 c 243 s 2; 2015 c 122 s 9.]

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