

RCW 48.74.130 Confidentiality of certain information—

Exceptions. (1) For purposes of this section, "confidential information" means:

(a) A memorandum in support of an opinion submitted under RCW 48.74.025 and 48.74.028 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;

(b) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under RCW 48.74.100(6). However, if an examination report or other material prepared in connection with an examination made under chapter 48.03 RCW is not held as private and confidential information, an examination report or other material prepared in connection with an examination made under RCW 48.74.100(6) is not "confidential information" to the same extent as if such examination report or other material had been prepared under chapter 48.03 RCW;

(c) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under RCW 48.74.110(2) (b) evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials, and other information;

(d) Any principle-based valuation report developed under RCW 48.74.110(2) (c) and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such report; and

(e) Any documents, materials, data, and other information submitted by a company under RCW 48.74.120 (collectively, "experience data") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company identifying or personally identifiable [identifying] information, that is provided to or obtained by the commissioner (together with any "experience data," the "experience materials") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

(2) (a) Except as provided in this section, a company's confidential information is confidential by law and privileged, is not subject to chapter 42.56 RCW, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(b) Neither the commissioner nor any person who received confidential information while acting under the authority of the

commissioner is permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information:

(i) With other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries;

(ii) In the case of confidential information specified in subsection (1)(a) and (d) of this section only, with the actuarial board for counseling and discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials;

(iii) In the case of (c)(i) and (ii) of this subsection, when the recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(d) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the actuarial board for counseling and discipline or its successor and shall maintain as confidential or privileged any document, material, data, or other 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, data, or other information.

(e) The commissioner may enter into agreements governing sharing and use of information consistent with this subsection (2).

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in (c) of this subsection.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection (2) is available and shall be enforced in any proceeding in, and in any court of, this state.

(h) In this section "regulatory agency," "law enforcement agency," and the "NAIC" include, but are not limited to, their employees, agents, consultants, and contractors.

(3) Notwithstanding subsection (2) of this section, any confidential information specified in subsection (1)(a) and (d) of this section:

(a) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under RCW 48.74.025 and 48.74.028 or principle-based valuation report developed under RCW 48.74.110(2)(c) by reason of an action required by this chapter or by rules adopted under this chapter;

(b) May otherwise be released by the commissioner with the written consent of the company; and

(c) Once any portion of a memorandum in support of an opinion submitted under RCW 48.74.025 and 48.74.028 or a principle-based valuation report developed under RCW 48.74.110(2)(c) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is

released by the company to the news media, all portions of such memorandum or report are no longer confidential. [2016 c 142 s 16.]

Effective date—2016 c 142: See note following RCW 48.74.010.