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**SUBSTITUTE SENATE BILL 5317**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Benton, Keiser, Benson, Prentice, Roach and Shin; by request of Insurance Commissioner)

READ FIRST TIME 02/03/05.

1 AN ACT Relating to providing confidentiality to certain insurance  
2 commissioner examinations; and amending RCW 48.02.065.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 48.02.065 and 2001 c 57 s 1 are each amended to read  
5 as follows:

6 (1) Documents, materials, or other information as described in  
7 either subsection (5) or (6), or both, of this section are confidential  
8 by law and privileged, are not subject to public disclosure under  
9 chapter 42.17 RCW, and are not subject to subpoena directed to the  
10 commissioner or any person who received documents, materials, or other  
11 information while acting under the authority of the commissioner. The  
12 commissioner is authorized to use such documents, materials, or other  
13 information in the furtherance of any regulatory or legal action  
14 brought as a part of the commissioner's official duties. The  
15 confidentiality and privilege created by this section and RCW  
16 42.17.31916 applies only to the commissioner, any person acting under  
17 the authority of the commissioner, the national association of  
18 insurance commissioners and its affiliates and subsidiaries, regulatory

1 and law enforcement officials of other states and nations, the federal  
2 government, and international authorities.

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

8 (3) The commissioner:

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

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

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

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

33 (5) Documents, materials, or information, which is either  
34 confidential or privileged, or both, which has been provided to the  
35 commissioner by (a) the national association of insurance commissioners  
36 and its affiliates and subsidiaries, (b) regulatory or law enforcement  
37 officials of other states and nations, the federal government, or  
38 international authorities, or (c) agencies of this state, is

1 confidential and privileged only if the documents, materials, or  
2 information is protected from disclosure by the applicable laws of the  
3 jurisdiction that is the source of the document, material, or  
4 information.

5 (6) Working papers, documents, materials, or information produced  
6 by, obtained by, or disclosed to the commissioner or any other person  
7 in the course of a financial or market conduct examination are not  
8 required to be disclosed by the commissioner unless cited by the  
9 commissioner in connection with an agency action as defined in RCW  
10 34.05.010(3). The commissioner shall notify a party that produced the  
11 documents, materials, or information five business days before  
12 disclosure in connection with an agency action. The notified party may  
13 seek injunctive relief in any Washington state superior court to  
14 prevent disclosure of any documents, materials, or information it  
15 believes is confidential or privileged. In civil actions between  
16 private parties or in criminal actions, disclosure to the commissioner  
17 under this section does not create any privilege or claim of  
18 confidentiality or waive any existing privilege or claim of  
19 confidentiality.

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

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

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

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

33 (8) Any person may petition a Washington state superior court to  
34 allow inspection of information exempt from public disclosure under  
35 subsection (6) of this section when the information is connected to  
36 allegations of negligence or malfeasance by the commissioner related to  
37 a financial or market conduct examination. The court shall conduct an  
38 in-camera review after notifying the commissioner and every party that

1 produced the information. The court may order the commissioner to  
2 allow the petitioner to have access to the information provided the  
3 petitioner maintains the confidentiality of the information. The  
4 petitioner must not disclose the information to any other person,  
5 except upon further order of the court. After conducting a regular  
6 hearing, the court may order that the information can be disclosed  
7 publicly if the court finds that there is a public interest in the  
8 disclosure of the information and the exemption of the information from  
9 public disclosure is clearly unnecessary to protect any individual's  
10 right of privacy or any vital governmental function.

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