
SUBSTITUTE HOUSE BILL 2842

State of Washington 61st Legislature 2010 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representatives Parker, Kirby, and Kenney; by request of Insurance Commissioner)

READ FIRST TIME 01/26/10.

1 AN ACT Relating to insurer receiverships; amending RCW 42.56.400;
2 adding a new section to chapter 48.31 RCW; and adding a new section to
3 chapter 48.99 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.31 RCW
6 to read as follows:

7 (1) Documents, materials, or other information that the
8 commissioner obtains under this chapter in the commissioner's capacity
9 as a receiver as defined in RCW 48.99.010(12) remain private company
10 documents and are not public records, are confidential by law and
11 privileged, are not subject to chapter 42.56 or 40.14 RCW, and are not
12 subject to subpoena directed to the commissioner or any person who
13 received documents, materials, or other information while acting under
14 the authority of the commissioner. The commissioner is authorized to
15 use such documents, materials, or other information in the furtherance
16 of any regulatory or legal action brought as a part of the
17 commissioner's official duties. The confidentiality and privilege
18 created by this section and RCW 42.56.400(17) is not waived if
19 confidential and privileged information under this section is shared

1 with any person acting under the authority of the commissioner,
2 representatives of insurance guaranty associations that may have
3 statutory obligations as a result of the insolvency of an insurer, the
4 national association of insurance commissioners and its affiliates and
5 subsidiaries, regulatory and law enforcement officials of other states
6 and nations, the federal government, and international authorities.

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

12 (3) Any person who can demonstrate a legal interest in the
13 receivership estate or a reasonable suspicion of negligence or
14 malfeasance by the commissioner related to an insurer receivership may
15 file a motion in the receivership matter to allow inspection of private
16 company information or documents otherwise not subject to disclosure
17 under subsection (1) of this section. The court shall conduct an in-
18 camera review after notifying the commissioner and every party that
19 produced the information. The court may order the commissioner to
20 allow the petitioner to have access to the information provided the
21 petitioner maintains the confidentiality of the information. The
22 petitioner must not disclose the information to any other person,
23 except upon further order of the court. After conducting a hearing,
24 the court may order that the information can be disclosed publicly if
25 the court finds that there is a public interest in the disclosure of
26 the information and protection of the information from public
27 disclosure is clearly unnecessary to protect any individual's right of
28 privacy, or any company's proprietary information, and the commissioner
29 has not demonstrated that disclosure would impair any vital
30 governmental function, or the receiver's ability to manage the estate.

31 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.99 RCW
32 to read as follows:

33 (1) Documents, materials, or other information that the
34 commissioner obtains under this chapter in the commissioner's capacity
35 as a receiver remain private company documents and are not public
36 records, are confidential by law and privileged, are not subject to
37 chapter 42.56 or 40.14 RCW, and are not subject to subpoena directed to

1 the commissioner or any person who received documents, materials, or
2 other information while acting under the authority of the commissioner.
3 The commissioner is authorized to use such documents, materials, or
4 other information in the furtherance of any regulatory or legal action
5 brought as a part of the commissioner's official duties. The
6 confidentiality and privilege created by this section and RCW
7 42.56.400(17) is not waived if confidential and privileged information
8 under this section is shared with any person acting under the authority
9 of the commissioner, representatives of insurance guaranty associations
10 that may have statutory obligations as a result of the insolvency of an
11 insurer, the national association of insurance commissioners and its
12 affiliates and subsidiaries, regulatory and law enforcement officials
13 of other states and nations, the federal government, and international
14 authorities.

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

20 (3) Any person who can demonstrate a legal interest in the
21 receivership estate or a reasonable suspicion of negligence or
22 malfeasance by the commissioner related to an insurer receivership may
23 file a motion in the receivership matter to allow inspection of private
24 company information or documents not subject to public disclosure under
25 subsection (1) of this section. The court shall conduct an in-camera
26 review after notifying the commissioner and every party that produced
27 the information. The court may order the commissioner to allow the
28 petitioner to have access to the information, provided the petitioner
29 maintains the confidentiality of the information. The petitioner must
30 not disclose the information to any other person, except upon further
31 order of the court. After conducting a hearing, the court may order
32 that the information can be disclosed if the court finds that there is
33 a public interest in the disclosure of the information and the
34 protection of the information from public disclosure is clearly
35 unnecessary to protect any individual's right of privacy, or any
36 company's proprietary information, and the commissioner has not
37 demonstrated that the disclosure would impair any vital governmental

1 function, the receivership estate, or the receiver's ability to manage
2 the estate.

3 **Sec. 3.** RCW 42.56.400 and 2009 c 104 s 23 are each amended to read
4 as follows:

5 The following information relating to insurance and financial
6 institutions is exempt from disclosure under this chapter:

7 (1) Records maintained by the board of industrial insurance appeals
8 that are related to appeals of crime victims' compensation claims filed
9 with the board under RCW 7.68.110;

10 (2) Information obtained and exempted or withheld from public
11 inspection by the health care authority under RCW 41.05.026, whether
12 retained by the authority, transferred to another state purchased
13 health care program by the authority, or transferred by the authority
14 to a technical review committee created to facilitate the development,
15 acquisition, or implementation of state purchased health care under
16 chapter 41.05 RCW;

17 (3) The names and individual identification data of either all
18 owners or all insureds, or both, received by the insurance commissioner
19 under chapter 48.102 RCW;

20 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

21 (5) Information provided under RCW 48.05.510 through 48.05.535,
22 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
23 through 48.46.625;

24 (6) Examination reports and information obtained by the department
25 of financial institutions from banks under RCW 30.04.075, from savings
26 banks under RCW 32.04.220, from savings and loan associations under RCW
27 33.04.110, from credit unions under RCW 31.12.565, from check cashers
28 and sellers under RCW 31.45.030(3), and from securities brokers and
29 investment advisers under RCW 21.20.100, all of which is confidential
30 and privileged information;

31 (7) Information provided to the insurance commissioner under RCW
32 48.110.040(3);

33 (8) Documents, materials, or information obtained by the insurance
34 commissioner under RCW 48.02.065, all of which are confidential and
35 privileged;

36 (9) Confidential proprietary and trade secret information provided

1 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
2 48.31C.070;

3 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
4 7.70.140 that, alone or in combination with any other data, may reveal
5 the identity of a claimant, health care provider, health care facility,
6 insuring entity, or self-insurer involved in a particular claim or a
7 collection of claims. For the purposes of this subsection:

8 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

9 (b) "Health care facility" has the same meaning as in RCW
10 48.140.010(6).

11 (c) "Health care provider" has the same meaning as in RCW
12 48.140.010(7).

13 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

14 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

15 (11) Documents, materials, or information obtained by the insurance
16 commissioner under RCW 48.135.060;

17 (12) Documents, materials, or information obtained by the insurance
18 commissioner under RCW 48.37.060;

19 (13) Confidential and privileged documents obtained or produced by
20 the insurance commissioner and identified in RCW 48.37.080;

21 (14) Documents, materials, or information obtained by the insurance
22 commissioner under RCW 48.37.140;

23 (15) Documents, materials, or information obtained by the insurance
24 commissioner under RCW 48.17.595; (~~and~~)

25 (16) Documents, materials, or information obtained by the insurance
26 commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);
27 and

28 (17) Documents, materials, or information obtained by the insurance
29 commissioner in the commissioner's capacity as receiver under sections
30 1 and 2 of this act, all of which are not public records.

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