
SECOND SUBSTITUTE SENATE BILL 5049

State of Washington

62nd Legislature

2012 Regular Session

By Senate Government Operations, Tribal Relations & Elections
(originally sponsored by Senators Kline, Roach, and Keiser)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to implementing the recommendations of the sunshine
2 committee; amending RCW 13.34.100, 42.56.330, 42.56.400, 48.37.060, and
3 70.148.060; reenacting and amending RCW 42.56.230, 42.56.240, and
4 42.56.250; providing an effective date; and providing an expiration
5 date.

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

7 **Sec. 1.** RCW 13.34.100 and 2010 c 180 s 2 are each amended to read
8 as follows:

9 (1) The court shall appoint a guardian ad litem for a child who is
10 the subject of an action under this chapter, unless a court for good
11 cause finds the appointment unnecessary. The requirement of a guardian
12 ad litem may be deemed satisfied if the child is represented by
13 independent counsel in the proceedings. The court shall attempt to
14 match a child with special needs with a guardian ad litem who has
15 specific training or education related to the child's individual needs.

16 (2) If the court does not have available to it a guardian ad litem
17 program with a sufficient number of volunteers, the court may appoint
18 a suitable person to act as guardian ad litem for the child under this

1 chapter. Another party to the proceeding or the party's employee or
2 representative shall not be so appointed.

3 (3) Each guardian ad litem program shall maintain a background
4 information record for each guardian ad litem in the program. The
5 background information record shall include, but is not limited to, the
6 following information:

7 (a) Level of formal education;

8 (b) General training related to the guardian ad litem's duties;

9 (c) Specific training related to issues potentially faced by
10 children in the dependency system;

11 (d) Specific training or education related to child disability or
12 developmental issues;

13 (e) Number of years' experience as a guardian ad litem;

14 (f) Number of appointments as a guardian ad litem and the county or
15 counties of appointment;

16 (g) The names of any counties in which the person was removed from
17 a guardian ad litem registry pursuant to a grievance action, and the
18 name of the court and the cause number of any case in which the court
19 has removed the person for cause;

20 (h) Founded allegations of abuse or neglect as defined in RCW
21 26.44.020;

22 (i) The results of an examination of state and national criminal
23 identification data. The examination shall consist of a background
24 check as allowed through the Washington state criminal records privacy
25 act under RCW 10.97.050, the Washington state patrol criminal
26 identification system under RCW 43.43.832 through 43.43.834, and the
27 federal bureau of investigation. The background check shall be done
28 through the Washington state patrol criminal identification section and
29 must include a national check from the federal bureau of investigation
30 based on the submission of fingerprints; and

31 (j) Criminal history, as defined in RCW 9.94A.030, for the period
32 covering ten years prior to the appointment.

33 The background information record shall be updated annually. As a
34 condition of appointment, the guardian ad litem's background
35 information record shall be made available to the court. If the
36 appointed guardian ad litem is not a member of a guardian ad litem
37 program a suitable person appointed by the court to act as guardian ad
38 litem shall provide the background information record to the court.

1 Upon appointment, the guardian ad litem, or guardian ad litem
2 program, shall provide the parties or their attorneys with a copy of
3 the background information record containing the results of the
4 background check conducted through the Washington state patrol criminal
5 identification system under RCW 43.43.832 through 43.43.834. The
6 portion of the background information record containing the results of
7 the criminal background check and the criminal history from the federal
8 bureau of investigation shall not be disclosed to the parties or their
9 attorneys. The background information record shall not include
10 identifying information that may be used to harm a guardian ad litem,
11 such as home addresses and home telephone numbers, and for volunteer
12 guardians ad litem the court may allow the use of maiden names or
13 pseudonyms as necessary for their safety.

14 (4) The appointment of the guardian ad litem shall remain in effect
15 until the court discharges the appointment or no longer has
16 jurisdiction, whichever comes first. The guardian ad litem may also be
17 discharged upon entry of an order of guardianship.

18 (5) A guardian ad litem through counsel, or as otherwise authorized
19 by the court, shall have the right to present evidence, examine and
20 cross-examine witnesses, and to be present at all hearings. A guardian
21 ad litem shall receive copies of all pleadings and other documents
22 filed or submitted to the court, and notice of all hearings according
23 to court rules. The guardian ad litem shall receive all notice
24 contemplated for a parent or other party in all proceedings under this
25 chapter.

26 (6)(a) Pursuant to this subsection, the department or supervising
27 agency and the child's guardian ad litem shall each notify a child of
28 his or her right to request counsel and shall ask the child whether he
29 or she wishes to have counsel. The department or supervising agency
30 and the child's guardian ad litem shall notify the child and make this
31 inquiry immediately after:

- 32 (i) The date of the child's twelfth birthday;
33 (ii) Assignment of a case involving a child age twelve or older; or
34 (iii) July 1, 2010, for a child who turned twelve years old before
35 July 1, 2010.

36 (b) The department or supervising agency and the child's guardian
37 ad litem shall repeat the notification and inquiry at least annually

1 and upon the filing of any motion or petition affecting the child's
2 placement, services, or familial relationships.

3 (c) The notification and inquiry is not required if the child has
4 already been appointed counsel.

5 (d) The department or supervising agency shall note in the child's
6 individual service and safety plan, and the guardian ad litem shall
7 note in his or her report to the court, that the child was notified of
8 the right to request counsel and indicate the child's position
9 regarding appointment of counsel.

10 (e) At the first regularly scheduled hearing after:

11 (i) The date of the child's twelfth birthday;

12 (ii) The date that a dependency petition is filed pursuant to this
13 chapter on a child age twelve or older; or

14 (iii) July 1, 2010, for a child who turned twelve years old before
15 July 1, 2010;

16 the court shall inquire whether the child has received notice of his or
17 her right to request legal counsel from the department or supervising
18 agency and the child's guardian ad litem. The court shall make an
19 additional inquiry at the first regularly scheduled hearing after the
20 child's fifteenth birthday. No inquiry is necessary if the child has
21 already been appointed counsel.

22 (f) If the child requests legal counsel and is age twelve or older,
23 or if the guardian ad litem or the court determines that the child
24 needs to be independently represented by counsel, the court may appoint
25 an attorney to represent the child's position.

26 (7) For the purposes of child abuse prevention and treatment act
27 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
28 or any related state or federal legislation, a person appointed
29 pursuant to this section shall be deemed a guardian ad litem to
30 represent the best interests of the minor in proceedings before the
31 court.

32 (8) When a court-appointed special advocate or volunteer guardian
33 ad litem is requested on a case, the program shall give the court the
34 name of the person it recommends. The program shall attempt to match
35 a child with special needs with a guardian ad litem who has specific
36 training or education related to the child's individual needs. The
37 court shall immediately appoint the person recommended by the program.

1 (9) If a party in a case reasonably believes the court-appointed
2 special advocate or volunteer guardian ad litem is inappropriate or
3 unqualified, the party may request a review of the appointment by the
4 program. The program must complete the review within five judicial
5 days and remove any appointee for good cause. If the party seeking the
6 review is not satisfied with the outcome of the review, the party may
7 file a motion with the court for the removal of the court-appointed
8 special advocate or volunteer guardian ad litem on the grounds the
9 advocate or volunteer is inappropriate or unqualified.

10 **Sec. 2.** RCW 42.56.230 and 2011 c 350 s 2 and 2011 c 173 s 1 are
11 each reenacted and amended to read as follows:

12 The following personal information is exempt from public inspection
13 and copying under this chapter:

14 (1) Personal information in any files maintained for students in
15 public schools, patients or clients of public institutions or public
16 health agencies, or welfare recipients;

17 (2) Personal information((~~7~~)) including, but not limited to,
18 addresses, telephone numbers, personal electronic mail addresses,
19 social security numbers, emergency contact and date of birth
20 information for a participant in a public or nonprofit program serving
21 or pertaining to children, adolescents, or students, including but not
22 limited to early learning or child care services, parks and recreation
23 programs, youth development programs, and after-school programs.
24 Emergency contact information may be provided to appropriate
25 authorities and medical personnel for the purpose of treating the
26 individual during an emergency situation;

27 (3) Personal information in files maintained for employees,
28 appointees, or elected officials of any public agency to the extent
29 that disclosure would violate their right to privacy;

30 (4) Information required of any taxpayer in connection with the
31 assessment or collection of any tax if the disclosure of the
32 information to other persons would: (a) Be prohibited to such persons
33 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
34 authorized under RCW 35.102.145; or (b) violate the taxpayer's right to
35 privacy or result in unfair competitive disadvantage to the taxpayer;

36 (5) Credit card numbers, debit card numbers, electronic check
37 numbers, card expiration dates, or bank or other financial (~~account~~

1 ~~numbers~~) information as defined in RCW 9.35.005 including social
2 security numbers, except when disclosure is expressly required by or
3 governed by other law;

4 (6) Personal and financial information related to a small loan or
5 any system of authorizing a small loan in RCW 31.45.093; and

6 (7)(a) Documents and related materials and scanned images of
7 documents and related materials used to prove identity, age,
8 residential address, social security number, or other personal
9 information required to apply for a driver's license or identicard.

10 (b) Information provided under RCW 46.20.111 that indicates that an
11 applicant declined to register with the selective service system.

12 **Sec. 3.** RCW 42.56.240 and 2010 c 266 s 2 and 2010 c 182 s 5 are
13 each reenacted and amended to read as follows:

14 The following investigative, law enforcement, and crime victim
15 information is exempt from public inspection and copying under this
16 chapter:

17 (1) Specific intelligence information and specific investigative
18 records compiled by investigative, law enforcement, and penology
19 agencies, and state agencies vested with the responsibility to
20 discipline members of any profession, the nondisclosure of which is
21 essential to effective law enforcement or for the protection of any
22 person's right to privacy;

23 (2) Information revealing the identity of persons who are witnesses
24 to or victims of crime or who file complaints with investigative, law
25 enforcement, or penology agencies, other than the commission, if
26 disclosure would endanger any person's life, physical safety, or
27 property. If at the time a complaint is filed the complainant, victim,
28 or witness indicates a desire for disclosure or nondisclosure, such
29 desire shall govern. However, all complaints filed with the commission
30 about any elected official or candidate for public office must be made
31 in writing and signed by the complainant under oath;

32 (3) Any records of investigative reports prepared by any state,
33 county, municipal, or other law enforcement agency pertaining to sex
34 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
35 defined in RCW 71.09.020, which have been transferred to the Washington
36 association of sheriffs and police chiefs for permanent electronic
37 retention and retrieval pursuant to RCW 40.14.070(2)(b);

1 (4) License applications under RCW 9.41.070; copies of license
2 applications or information on the applications may be released to law
3 enforcement or corrections agencies;

4 (5) Information revealing the identity of child victims of sexual
5 assault who are under age eighteen. Identifying information (~~means~~)
6 includes, but is not limited to the child victim's name, address,
7 location, photograph, and in cases in which the child victim is a
8 relative or stepchild of the alleged perpetrator, identification of the
9 relationship between the child and the alleged perpetrator;

10 (6) Information contained in a local or regionally maintained gang
11 data base as well as the statewide gang database referenced in RCW
12 43.43.762;

13 (7) Data from the electronic sales tracking system established in
14 RCW 69.43.165; and

15 (8) Information submitted to the statewide unified sex offender
16 notification and registration program under RCW 36.28A.040(6) by a
17 person for the purpose of receiving notification regarding a registered
18 sex offender, including the person's name, residential address, and e-
19 mail address.

20 **Sec. 4.** RCW 42.56.250 and 2010 c 257 s 1 and 2010 c 128 s 9 are
21 each reenacted and amended to read as follows:

22 The following employment and licensing information is exempt from
23 public inspection and copying under this chapter:

24 (1) Test questions, scoring keys, and other examination data used
25 to administer a license, employment, or academic examination;

26 (2) All applications for public employment, including the names of
27 applicants, resumes, and other related materials submitted with respect
28 to an applicant, subject to the following exceptions:

29 (a) The applications of finalists applying for the highest
30 management position in a public agency, county, or local government
31 department with confidential reference information removed or redacted
32 is not exempt from inspection and copying; and

33 (b) Application materials not exempt from inspection and copying
34 must be available to the public after the finalists are selected, but
35 before the agency, county, or local government makes its decision;

36 (3) The residential addresses, residential telephone numbers,
37 personal wireless telephone numbers, personal electronic mail

1 addresses, social security numbers, and emergency contact information
2 of employees or volunteers of a public agency, and the names, dates of
3 birth, residential addresses, residential telephone numbers, personal
4 wireless telephone numbers, personal electronic mail addresses, social
5 security numbers, and emergency contact information of dependents of
6 employees or volunteers of a public agency that are held by any public
7 agency in personnel records, public employment related records, or
8 volunteer rosters, or are included in any mailing list of employees or
9 volunteers of any public agency. For purposes of this subsection,
10 "employees" includes independent provider home care workers as defined
11 in RCW 74.39A.240;

12 (4) Information that identifies a person who, while an agency
13 employee: (a) Seeks advice, under an informal process established by
14 the employing agency, in order to ascertain his or her rights in
15 connection with a possible unfair practice under chapter 49.60 RCW
16 against the person; and (b) requests his or her identity or any
17 identifying information not be disclosed;

18 (5) Investigative records compiled by an employing agency
19 conducting an active and ongoing investigation of a possible unfair
20 practice under chapter 49.60 RCW or of a possible violation of other
21 federal, state, or local laws prohibiting discrimination in employment;

22 (6) Criminal history records checks for board staff finalist
23 candidates conducted pursuant to RCW 43.33A.025;

24 (7) Except as provided in RCW 47.64.220, salary and benefit
25 information for maritime employees collected from private employers
26 under RCW 47.64.220(1) and described in RCW 47.64.220(2); and

27 (8) Photographs and month and year of birth in the personnel files
28 of employees and workers of criminal justice agencies as defined in RCW
29 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have
30 access to the photographs and full date of birth. For the purposes of
31 this subsection, news media does not include any person or organization
32 of persons in the custody of a criminal justice agency as defined in
33 RCW 10.97.030.

34 For the purposes of this section, "employment" does not include
35 service on boards or commissions where the individual does not receive
36 pay or benefits, even if that individual may receive minimal
37 reimbursement or stipend for expenses.

1 **Sec. 5.** RCW 42.56.330 and 2010 c 128 s 8 are each amended to read
2 as follows:

3 The following information relating to public utilities and
4 transportation is exempt from disclosure under this chapter:

5 (1) Records filed with the utilities and transportation commission
6 or attorney general under RCW 80.04.095 that a court has determined are
7 confidential under RCW 80.04.095;

8 (2) The residential addresses and residential telephone numbers of
9 the customers of a public utility contained in the records or lists
10 held by the public utility of which they are customers, except that
11 this information may be released to the division of child support or
12 the agency or firm providing child support enforcement for another
13 state under Title IV-D of the federal social security act, for the
14 establishment, enforcement, or modification of a support order;

15 (3) The names, residential addresses, residential telephone
16 numbers, and other individually identifiable records held by an agency
17 in relation to a vanpool, carpool, or other ride-sharing program or
18 service(~~(; however, these records)~~). Participant's names, general
19 locations, and e-mail addresses may be disclosed to other persons who
20 apply for ride-matching services and who need that information in order
21 to identify potential riders or drivers with whom to share rides;

22 (4) The personally identifying information of current or former
23 participants or applicants in a paratransit or other transit service
24 operated for the benefit of persons with disabilities or elderly
25 persons;

26 (5) The personally identifying information of persons who acquire
27 and use transit passes and other fare payment media including, but not
28 limited to, stored value smart cards and magnetic strip cards, except
29 that an agency may disclose this information to a person, employer,
30 educational institution, or other entity that is responsible, in whole
31 or in part, for payment of the cost of acquiring or using a transit
32 pass or other fare payment media for the purpose of preventing fraud(~~(; or to the news media when reporting on public transportation or public~~
33 ~~safety)~~).
34

35 (a) This information may be disclosed in aggregate form if the data
36 does not contain any personally identifying information.

37 (b) Personally identifying information may be released to law
38 enforcement agencies if the request is accompanied by a court order;

1 (6) Any information obtained by governmental agencies that is
2 collected by the use of a motor carrier intelligent transportation
3 system or any comparable information equipment attached to a truck,
4 tractor, or trailer; however, the information may be given to other
5 governmental agencies or the owners of the truck, tractor, or trailer
6 from which the information is obtained. As used in this subsection,
7 "motor carrier" has the same definition as provided in RCW 81.80.010;

8 (7) The personally identifying information of persons who acquire
9 and use transponders or other technology to facilitate payment of
10 tolls. This information may be disclosed in aggregate form as long as
11 the data does not contain any personally identifying information. For
12 these purposes aggregate data may include the census tract of the
13 account holder as long as any individual personally identifying
14 information is not released. Personally identifying information may be
15 released to law enforcement agencies only for toll enforcement
16 purposes. Personally identifying information may be released to law
17 enforcement agencies for other purposes only if the request is
18 accompanied by a court order; and

19 (8) The personally identifying information of persons who acquire
20 and use a driver's license or identicard that includes a radio
21 frequency identification chip or similar technology to facilitate
22 border crossing. This information may be disclosed in aggregate form
23 as long as the data does not contain any personally identifying
24 information. Personally identifying information may be released to law
25 enforcement agencies only for United States customs and border
26 protection enforcement purposes. Personally identifying information
27 may be released to law enforcement agencies for other purposes only if
28 the request is accompanied by a court order.

29 **Sec. 6.** RCW 42.56.400 and 2011 c 188 s 21 are each amended to read
30 as follows:

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

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

36 (2) Information obtained and exempted or withheld from public
37 inspection by the health care authority under RCW 41.05.026, whether

1 retained by the authority, transferred to another state purchased
2 health care program by the authority, or transferred by the authority
3 to a technical review committee created to facilitate the development,
4 acquisition, or implementation of state purchased health care under
5 chapter 41.05 RCW;

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

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

10 (5) Information provided under RCW 48.05.510 through 48.05.535,
11 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
12 through 48.46.625;

13 (6) Examination reports and information obtained by the department
14 of financial institutions from banks under RCW 30.04.075, from savings
15 banks under RCW 32.04.220, from savings and loan associations under RCW
16 33.04.110, from credit unions under RCW 31.12.565, from check cashers
17 and sellers under RCW 31.45.030(3), and from securities brokers and
18 investment advisers under RCW 21.20.100, all of which is confidential
19 and privileged information;

20 (7) Information provided to the insurance commissioner under RCW
21 48.110.040(3);

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

25 (9) Confidential proprietary and trade secret information provided
26 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
27 48.31C.070;

28 ~~(10) ((Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and~~
29 ~~7.70.140 that, alone or in combination with any other data, may reveal~~
30 ~~the identity of a claimant, health care provider, health care facility,~~
31 ~~insuring entity, or self-insurer involved in a particular claim or a~~
32 ~~collection of claims. For the purposes of this subsection:~~

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

34 ~~(b) "Health care facility" has the same meaning as in RCW~~
35 ~~48.140.010(6).~~

36 ~~(c) "Health care provider" has the same meaning as in RCW~~
37 ~~48.140.010(7).~~

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

1 ~~(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);~~
2 ~~(11))~~ Documents, materials, or information obtained by the
3 insurance commissioner under RCW 48.135.060;
4 ~~((12))~~ (11) Documents, materials, or information obtained by the
5 insurance commissioner under RCW 48.37.060;
6 ~~((13))~~ (12) Confidential and privileged documents obtained or
7 produced by the insurance commissioner and identified in RCW 48.37.080;
8 ~~((14))~~ (13) Documents, materials, or information obtained by the
9 insurance commissioner under RCW 48.37.140;
10 ~~((15))~~ (14) Documents, materials, or information obtained by the
11 insurance commissioner under RCW 48.17.595;
12 ~~((16))~~ (15) Documents, materials, or information obtained by the
13 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and
14 (7)(a)(ii);
15 ~~((17))~~ (16) Documents, materials, or information obtained by the
16 insurance commissioner in the commissioner's capacity as receiver under
17 RCW 48.31.025 and 48.99.017, which are records under the jurisdiction
18 and control of the receivership court. The commissioner is not
19 required to search for, log, produce, or otherwise comply with the
20 public records act for any records that the commissioner obtains under
21 chapters 48.31 and 48.99 RCW in the commissioner's capacity as a
22 receiver, except as directed by the receivership court;
23 ~~((18))~~ (17) Documents, materials, or information obtained by the
24 insurance commissioner under RCW 48.13.151; and
25 ~~((19))~~ (18) Data, information, and documents provided by a
26 carrier pursuant to section 1, chapter 172, Laws of 2010.

27 **Sec. 7.** RCW 48.37.060 and 2011 1st sp.s. c 43 s 460 are each
28 amended to read as follows:

29 (1) When the commissioner determines that other market conduct
30 actions identified in RCW 48.37.040(4)(a) have not sufficiently
31 addressed issues raised concerning company activities in Washington
32 state, the commissioner has the discretion to conduct market conduct
33 examinations in accordance with the NAIC market conduct uniform
34 examination procedures and the NAIC market regulation handbook.

35 (2)(a) In lieu of an examination of an insurer licensed in this
36 state, the commissioner shall accept an examination report of another
37 state, unless the commissioner determines that the other state does not

1 have laws substantially similar to those of this state, or does not
2 have a market oversight system that is comparable to the market conduct
3 oversight system set forth in this law.

4 (b) The commissioner's determination under (a) of this subsection
5 is discretionary with the commissioner and is not subject to appeal.

6 (c) If the insurer to be examined is part of an insurance holding
7 company system, the commissioner may also seek to simultaneously
8 examine any affiliates of the insurer under common control and
9 management which are licensed to write the same lines of business in
10 this state.

11 (3) Before commencement of a market conduct examination, market
12 conduct oversight personnel shall prepare a work plan consisting of the
13 following:

14 (a) The name and address of the insurer being examined;

15 (b) The name and contact information of the examiner-in-charge;

16 (c) The name of all market conduct oversight personnel initially
17 assigned to the market conduct examination;

18 (d) The justification for the examination;

19 (e) The scope of the examination;

20 (f) The date the examination is scheduled to begin;

21 (g) Notice of any noninsurance department personnel who will assist
22 in the examination;

23 (h) A time estimate for the examination;

24 (i) A budget for the examination if the cost of the examination is
25 billed to the insurer; and

26 (j) An identification of factors that will be included in the
27 billing if the cost of the examination is billed to the insurer.

28 (4)(a) Within ten days of the receipt of the information contained
29 in subsection (3) of this section, insurers may request the
30 commissioner's discretionary review of any alleged conflict of
31 interest, pursuant to RCW 48.37.090(2), of market conduct oversight
32 personnel and noninsurance department personnel assigned to a market
33 conduct examination. The request for review shall specifically
34 describe the alleged conflict of interest in the proposed assignment of
35 any person to the examination.

36 (b) Within five business days of receiving a request for
37 discretionary review of any alleged conflict of interest in the
38 proposed assignment of any person to a market conduct examination, the

1 commissioner or designee shall notify the insurer of any action
2 regarding the assignment of personnel to a market conduct examination
3 based on the insurer's allegation of conflict of interest.

4 (5) Market conduct examinations shall, to the extent feasible, use
5 desk examinations and data requests before an on-site examination.

6 (6) Market conduct examinations shall be conducted in accordance
7 with the provisions set forth in the NAIC market regulation handbook
8 and the NAIC market conduct uniform examinations procedures, subject to
9 the precedence of the provisions of chapter 82, Laws of 2007.

10 (7) The commissioner shall use the NAIC standard data request.

11 (8) Announcement of the examination shall be sent to the insurer
12 and posted on the NAIC's examination tracking system as soon as
13 possible but in no case later than sixty days before the estimated
14 commencement of the examination, except where the examination is
15 conducted in response to extraordinary circumstances as described in
16 RCW 48.37.050(2)(a). The announcement sent to the insurer shall
17 contain the examination work plan and a request for the insurer to name
18 its examination coordinator.

19 (9) If an examination is expanded significantly beyond the original
20 reasons provided to the insurer in the notice of the examination
21 required by subsection (3) of this section, the commissioner shall
22 provide written notice to the insurer, explaining the expansion and
23 reasons for the expansion. The commissioner shall provide a revised
24 work plan if the expansion results in significant changes to the items
25 presented in the original work plan required by subsection (3) of this
26 section.

27 (10) The commissioner shall conduct a preexamination conference
28 with the insurer examination coordinator and key personnel to clarify
29 expectations at least thirty days before commencement of the
30 examination, unless otherwise agreed by the insurer and the
31 commissioner.

32 (11) Before the conclusion of the field work for market conduct
33 examination, the examiner-in-charge shall review examination findings
34 to date with insurer personnel and schedule an exit conference with the
35 insurer, in accordance with procedures in the NAIC market regulation
36 handbook.

37 (12)(a) No later than sixty days after completion of each market
38 conduct examination, the commissioner shall make a full written report

1 of each market conduct examination containing only facts ascertained
2 from the accounts, records, and documents examined and from the sworn
3 testimony of individuals, and such conclusions and recommendations as
4 may reasonably be warranted from such facts.

5 (b) The report shall be certified by the commissioner or by the
6 examiner-in-charge of the examination, and shall be filed in the
7 commissioner's office subject to (c) of this subsection.

8 (c) The commissioner shall furnish a copy of the market conduct
9 examination report to the person examined not less than ten days and,
10 unless the time is extended by the commissioner, not more than thirty
11 days prior to the filing of the report for public inspection in the
12 commissioner's office. If the person so requests in writing within
13 such period, the commissioner shall hold a hearing to consider
14 objections of such person to the report as proposed, and shall not so
15 file the report until after such hearing and until after any
16 modifications in the report deemed necessary by the commissioner have
17 been made.

18 (d) Within thirty days of the end of the period described in (c) of
19 this subsection, unless extended by order of the commissioner, the
20 commissioner shall consider the report, together with any written
21 submissions or rebuttals and any relevant portions of the examiner's
22 work papers and enter an order:

23 (i) Adopting the market conduct examination report as filed or with
24 modification or corrections. If the market conduct examination report
25 reveals that the company is operating in violation of any law, rule, or
26 order of the commissioner, the commissioner may order the company to
27 take any action the commissioner considers necessary and appropriate to
28 cure that violation;

29 (ii) Rejecting the market conduct examination report with
30 directions to the examiners to reopen the examination for purposes of
31 obtaining additional data, documentation, or information, and refiling
32 under this subsection; or

33 (iii) Calling for an investigatory hearing with no less than twenty
34 days' notice to the company for purposes of obtaining additional
35 documentation, data, information, and testimony.

36 (e) All orders entered under (d) of this subsection must be
37 accompanied by findings and conclusions resulting from the
38 commissioner's consideration and review of the market conduct

1 examination report, relevant examiner work papers, and any written
2 submissions or rebuttals. The order is considered a final
3 administrative decision and may be appealed under the administrative
4 procedure act, chapter 34.05 RCW, and must be served upon the company
5 by certified mail or certifiable electronic means, together with a copy
6 of the adopted examination report. A copy of the adopted examination
7 report must be sent by certified mail or certifiable electronic means
8 to each director at the director's residential address or to a personal
9 e-mail account.

10 (f)(i) Upon the adoption of the market conduct examination report
11 under (d) of this subsection, the commissioner shall continue to hold
12 the content of the examination report as private and confidential
13 information for a period of five days except that the order may be
14 disclosed to the person examined. Thereafter, the commissioner (~~may~~)
15 must open the report for public inspection so long as no court of
16 competent jurisdiction has stayed its publication.

17 (ii) If the commissioner determines that regulatory action is
18 appropriate as a result of any market conduct examination, he or she
19 may initiate any proceedings or actions as provided by law.

20 (iii) Nothing contained in this subsection requires the
21 commissioner to disclose any information or records that would indicate
22 or show the existence or content of any investigation or activity of a
23 criminal justice agency.

24 (g) The insurer's response shall be included in the commissioner's
25 order adopting the final report as an exhibit to the order. The
26 insurer is not obligated to submit a response.

27 (13) Except as provided in subsection (12)(f)(i) of this section,
28 the commissioner may withhold from public inspection any examination or
29 investigation report for so long as he or she deems it advisable.

30 (14)(a) Market conduct examinations within this state of any
31 insurer domiciled or having its home offices in this state, other than
32 a title insurer, made by the commissioner or the commissioner's
33 examiners and employees shall, except as to fees, mileage, and expense
34 incurred as to witnesses, be at the expense of the state.

35 (b) Every other examination, whatsoever, or any part of the market
36 conduct examination of any person domiciled or having its home offices
37 in this state requiring travel and services outside this state, shall
38 be made by the commissioner or by examiners designated by the

1 commissioner and shall be at the expense of the person examined; but a
2 domestic insurer shall not be liable for the compensation of examiners
3 employed by the commissioner for such services outside this state.

4 (c) When making a market conduct examination under this chapter,
5 the commissioner may contract, in accordance with applicable state
6 contracting procedures, for qualified attorneys, appraisers,
7 independent certified public accountants, contract actuaries, and other
8 similar individuals who are independently practicing their professions,
9 even though those persons may from time to time be similarly employed
10 or retained by persons subject to examination under this chapter, as
11 examiners as the commissioner deems necessary for the efficient conduct
12 of a particular examination. The compensation and per diem allowances
13 paid to such contract persons shall be reasonable in the market and
14 time incurred, shall not exceed one hundred twenty-five percent of the
15 compensation and per diem allowances for examiners set forth in the
16 guidelines adopted by the national association of insurance
17 commissioners, unless the commissioner demonstrates that one hundred
18 twenty-five percent is inadequate under the circumstances of the
19 examination, and subject to the provisions of (a) of this subsection.

20 (d)(i) The person examined and liable shall reimburse the state
21 upon presentation of an itemized statement thereof, for the actual
22 travel expenses of the commissioner's examiners, their reasonable
23 living expenses allowance, and their per diem compensation, including
24 salary and the employer's cost of employee benefits, at a reasonable
25 rate approved by the commissioner, incurred on account of the
26 examination. Per diem, salary, and expenses for employees examining
27 insurers domiciled outside the state of Washington shall be established
28 by the commissioner on the basis of the national association of
29 insurance commissioner's recommended salary and expense schedule for
30 zone examiners, or the salary schedule established by the human
31 resources director and the expense schedule established by the office
32 of financial management, whichever is higher. A domestic title insurer
33 shall pay the examination expense and costs to the commissioner as
34 itemized and billed by the commissioner.

35 (ii) The commissioner or the commissioner's examiners shall not
36 receive or accept any additional emolument on account of any
37 examination.

1 (iii) Market conduct examination fees subject to being reimbursed
2 by an insurer shall be itemized and bills shall be provided to the
3 insurer on a monthly basis for review prior to submission for payment,
4 or as otherwise provided by state law.

5 (e) Nothing contained in this chapter limits the commissioner's
6 authority to terminate or suspend any examination in order to pursue
7 other legal or regulatory action under the insurance laws of this
8 state. Findings of fact and conclusions made pursuant to any
9 examination are prima facie evidence in any legal or regulatory action.

10 (f) The commissioner shall maintain active management and oversight
11 of market conduct examination costs, including costs associated with
12 the commissioner's own examiners, and with retaining qualified contract
13 examiners necessary to perform an examination. Any agreement with a
14 contract examiner shall:

15 (i) Clearly identify the types of functions to be subject to
16 outsourcing;

17 (ii) Provide specific timelines for completion of the outsourced
18 review;

19 (iii) Require disclosure to the insurer of contract examiners'
20 recommendations;

21 (iv) Establish and use a dispute resolution or arbitration
22 mechanism to resolve conflicts with insurers regarding examination
23 fees; and

24 (v) Require disclosure of the terms of the contracts with the
25 outside consultants that will be used, specifically the fees and/or
26 hourly rates that can be charged.

27 (g) The commissioner, or the commissioner's designee, shall review
28 and affirmatively endorse detailed billings from the qualified contract
29 examiner before the detailed billings are sent to the insurer.

30 **Sec. 8.** RCW 70.148.060 and 2005 c 274 s 341 are each amended to
31 read as follows:

32 (1) All (~~examination and proprietary reports and~~) information
33 except for proprietary reports or information obtained by the director
34 and the director's staff in soliciting bids from insurers and in
35 monitoring the insurer selected by the director shall (~~not~~) be made
36 public or otherwise disclosed to any person, firm, corporation, agency,
37 association, governmental body, or other entity.

1 (2) Subsection (1) of this section notwithstanding, the director
2 may furnish all or part of examination reports prepared by the director
3 or by any person, firm, corporation, association, or other entity
4 preparing the reports on behalf of the director to:

5 (a) The Washington state insurance commissioner;

6 (b) A person or organization officially connected with the insurer
7 as officer, director, attorney, auditor, or independent attorney or
8 independent auditor; and

9 (c) The attorney general in his or her role as legal advisor to the
10 director.

11 (3) Subsection (1) of this section notwithstanding, the director
12 may furnish all or part of the examination or proprietary reports or
13 information obtained by the director to:

14 (a) The Washington state insurance commissioner; and

15 (b) A person, firm, corporation, association, governmental body, or
16 other entity with whom the director has contracted for services
17 necessary to perform his or her official duties.

18 (4) (~~Examination reports and~~) Proprietary information obtained by
19 the director and the director's staff (~~are~~) is not subject to public
20 disclosure under chapter 42.56 RCW.

21 (5) A person who violates any provision of this section is guilty
22 of a gross misdemeanor.

23 NEW SECTION. **Sec. 9.** Section 6 of this act takes effect July 1,
24 2012.

25 NEW SECTION. **Sec. 10.** Section 8 of this act expires June 1, 2013.

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