
HOUSE BILL 2043

State of Washington

56th Legislature

1999 Regular Session

By Representatives Bush and Grant

Read first time 02/15/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to insurer self-audits; and adding a new chapter to
2 Title 48 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds and declares that
5 efforts by insurers to comply voluntarily with state and federal
6 statutory and regulatory requirements are vital to the public interest;
7 that possible discovery and use in civil litigation of work produced in
8 connection with such voluntary compliance efforts has an undesirable
9 chilling effect on the use, scope, and effectiveness of voluntary
10 compliance efforts by insurers; and that the public interest in
11 encouraging aggressive voluntary compliance review outweighs the value
12 of this work product in civil litigation.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Affiliate" means any person that controls, is controlled by,
16 or is under common control with an insurer.

17 (2) "Civil action" means a civil proceeding pending in a court or
18 other adjudicatory tribunal with jurisdiction to issue a request or

1 subpoena for records, including a voluntary or mandated alternative
2 dispute resolution mechanism under which a party may compel the
3 production of records. "Civil action" does not include an examination
4 or enforcement proceeding initiated by a governmental agency with
5 primary regulatory jurisdiction over an insurer in possession of a
6 compliance review document.

7 (3) "Compliance review personnel" means a person or persons
8 assigned and directed by the board of directors or management of an
9 insurer or affiliate to conduct a compliance review, and any person
10 engaged or assigned by compliance review personnel or by the board of
11 directors or management to assist in a compliance review.

12 (4) "Compliance review" means a self-critical analysis conducted by
13 compliance review personnel to test, review, or evaluate past conduct,
14 transactions, policies, or procedures for the purpose of confidentially
15 (a) ascertaining, monitoring, or remediating violations of applicable
16 state and federal statutes, rules, regulations, or mandatory policies,
17 statements, or guidelines, (b) assessing and improving loan quality,
18 loan underwriting standards, or lending practices, or (c) assessing and
19 improving financial reporting to federal or state regulatory agencies.

20 (5) "Compliance review document" means any record prepared or
21 created by compliance review personnel in connection with a compliance
22 review. "Compliance review document" includes any documents created or
23 data generated in the course of conducting a compliance review, but
24 does not include other underlying documents, data, or factual materials
25 that are the subject of, or source materials for, the compliance
26 review, including any documents in existence prior to the commencement
27 of the compliance review that are not themselves compliance review
28 documents related to a past compliance review.

29 (6) "Insurer" means the same as defined in RCW 48.01.050.

30 (7) "Person" means an individual, group, committee, partnership,
31 firm, association, corporation, limited liability company, or other
32 entity, including an insurer or affiliate and its agents, employees,
33 legal counsel, auditors, and consultants.

34 NEW SECTION. **Sec. 3.** Except as provided in section 4 of this act:

35 (1) Compliance review documents are confidential and are not
36 discoverable or admissible as evidence in any civil action; and

37 (2) Compliance review personnel shall not be required to testify at
38 deposition or trial in any civil action concerning the contents of or

1 matters addressed in any compliance review or any compliance review
2 documents, nor as to the actions or activities undertaken by or at the
3 direction of the insurer or affiliate in connection with a compliance
4 review.

5 NEW SECTION. **Sec. 4.** Section 3 of this act does not:

6 (1) Limit the discovery or admissibility in any civil action of any
7 documents that are not compliance review documents;

8 (2) Limit the discovery or admissibility of the testimony as to the
9 identity of relevant witnesses or the identification of any relevant
10 documents other than compliance review documents;

11 (3) Apply if the insurer or affiliate expressly waives the
12 privilege in writing;

13 (4) Apply if a compliance review document or matters learned in
14 connection with a compliance review are voluntarily disclosed, but only
15 to the extent of that disclosure, to a nonaffiliated third party other
16 than a federal or state regulatory agency or legal counsel for or
17 independent auditors of the insurer or affiliate; or

18 (5) Apply to any information required by statute, rule, or federal
19 regulation to be maintained by or provided to a governmental agency
20 while the information is in the possession of the agency, to the extent
21 applicable law authorizes its disclosure.

22 NEW SECTION. **Sec. 5.** In a proceeding in which the privilege
23 provided by this chapter is asserted, a court of competent jurisdiction
24 may determine after in camera review that the privilege does not apply
25 to any or all of the documents for which the privilege is claimed, and
26 if so, the court may order the materials disclosed but shall protect
27 from disclosure any other material in or related to compliance review
28 documents or to activities of compliance review personnel to which the
29 privilege does apply.

30 NEW SECTION. **Sec. 6.** This chapter does not limit, waive, or
31 abrogate the scope or nature of any other statutory or common law
32 privilege of this state or the United States, including the attorney-
33 client privilege.

1 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 48 RCW.

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