

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6059**

65th Legislature  
2018 Regular Session

Passed by the Senate January 25, 2018  
Yeas 47 Nays 2

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**President of the Senate**

Passed by the House February 27, 2018  
Yeas 98 Nays 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6059** as passed by Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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SENATE BILL 6059

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Passed Legislature - 2018 Regular Session

State of Washington

65th Legislature

2018 Regular Session

By Senators Angel and Mullet; by request of Insurance Commissioner

Prefiled 12/28/17.

1 AN ACT Relating to the insurer corporate governance annual  
2 disclosure model act; reenacting and amending RCW 42.56.400; adding a  
3 new chapter to Title 48 RCW; creating a new section; prescribing  
4 penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to:

7 (a) Provide the insurance commissioner a summary of an insurer or  
8 insurance group's corporate governance structure, policies, and  
9 practices to permit the commissioner to gain and maintain an  
10 understanding of the insurer's corporate governance framework;

11 (b) Outline the requirements for completing a corporate  
12 governance annual disclosure with the commissioner; and

13 (c) Provide for the confidential treatment of the corporate  
14 governance annual disclosure and related information that will  
15 contain confidential and sensitive information related to an insurer  
16 or insurance group's internal operations and proprietary and trade  
17 secret information which, if made public, could potentially cause the  
18 insurer or insurance group competitive harm or disadvantage.

19 (2) This chapter does not prescribe or impose corporate  
20 governance standards and internal procedures beyond that which is  
21 required under applicable corporate law. This chapter does not limit

1 the commissioner's authority, or the rights or obligations of third  
2 parties, under chapter 48.03 RCW.

3 (3) This chapter applies to all insurers domiciled in this state.

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

7 (1) "Commissioner" means the insurance commissioner of this  
8 state.

9 (2) "Corporate governance annual disclosure" means a confidential  
10 report filed by the insurer or insurance group under this chapter.

11 (3) "Insurance group" means those insurers and affiliates  
12 included within an insurance holding company system as defined in RCW  
13 48.31B.005.

14 (4) "Insurer" has the same meaning as set forth in RCW  
15 48.31B.005.

16 (5) "ORSA summary report" means the report filed under chapter  
17 48.05A RCW.

18 NEW SECTION. **Sec. 3.** (1) An insurer, or the insurance group of  
19 which the insurer is a member, must, no later than June 1st of each  
20 calendar year, submit to the commissioner a corporate governance  
21 annual disclosure that contains the information described in section  
22 4(2) of this act. If the insurer is a member of an insurance group,  
23 the insurer must submit the report required by this section to the  
24 commissioner of the lead state for the insurance group, under the  
25 laws of the lead state, as determined by the procedures outlined in  
26 the most recent financial analysis handbook adopted by the national  
27 association of insurance commissioners.

28 (2) The corporate governance annual disclosure must include a  
29 signature of the insurer or insurance group's chief executive officer  
30 or corporate secretary attesting to the best of the individual's  
31 belief and knowledge that the insurer has implemented the corporate  
32 governance practices and that a copy of the disclosure has been  
33 provided to the insurer's board of directors or the appropriate  
34 committee thereof.

35 (3) An insurer not required to submit a corporate governance  
36 annual disclosure under this section must do so upon the  
37 commissioner's request.

1 (4) For purposes of completing the corporate governance annual  
2 disclosure, the insurer or insurance group may provide information  
3 regarding corporate governance at either (a) the ultimate controlling  
4 parent level, (b) an intermediate holding company level, or (c) the  
5 individual legal entity level, or any combination of (a) through (c)  
6 of this subsection, depending upon how the insurer or insurance group  
7 has structured its system of corporate governance. The insurer or  
8 insurance group is encouraged to make the corporate governance annual  
9 disclosure at the level at which the insurer's or insurance group's  
10 risk appetite is determined, or at which the earnings, capital,  
11 liquidity, operations, and reputation of the insurer are overseen  
12 collectively and at which the supervision of those factors are  
13 coordinated and exercised, or the level at which legal liability for  
14 failure of general corporate governance duties would be placed. If  
15 the insurer or insurance group determines the level of reporting  
16 based on these criteria, it must indicate which of the three criteria  
17 was used to determine the level of reporting and explain any  
18 subsequent changes in the level of reporting.

19 (5) The review of the corporate governance annual disclosure and  
20 any additional requests for information shall be made through the  
21 lead state as determined by the procedure within the most recent  
22 financial analysis handbook referenced in subsection (1) of this  
23 section.

24 (6) Insurers providing information substantially similar to the  
25 information required by this chapter in other documents provided to  
26 the commissioner, including proxy statements filed in conjunction  
27 with form B requirements, or other state or federal filings provided  
28 to the commissioner are not required to duplicate that information in  
29 the corporate governance annual disclosure, but are only required to  
30 cross-reference the document in which the information is included.

31 NEW SECTION. **Sec. 4.** (1) The insurer or insurance group has  
32 discretion over the responses to the corporate governance annual  
33 disclosure inquiries, provided the corporate governance annual  
34 disclosure contains the material information necessary to permit the  
35 commissioner to gain an understanding of the insurer's or insurance  
36 group's corporate governance structure, policies, and practices. The  
37 commissioner may request additional information that he or she deems  
38 material and necessary to provide the commissioner with a clear

1 understanding of the corporate governance policies, the reporting or  
2 information system, or controls implementing those policies.

3 (2) The corporate governance annual disclosure must be prepared  
4 consistent with the national association of insurance commissioners'  
5 corporate governance annual disclosure model rule which may be  
6 adopted by the commissioner. Documentation and supporting information  
7 must be maintained and made available upon examination or upon  
8 request of the commissioner.

9 NEW SECTION. **Sec. 5.** (1) Documents, materials, or other  
10 information including the corporate governance annual disclosure, in  
11 the possession or control of the commissioner that are obtained by,  
12 created by, or disclosed to the commissioner or any other person  
13 under this chapter, are recognized by this state as being proprietary  
14 and to contain trade secrets. All the documents, materials, or other  
15 information is confidential by law and privileged, is not subject to  
16 chapter 42.56 RCW, are not subject to subpoena, and are not subject  
17 to discovery or admissible in evidence in any private civil action.  
18 However, the commissioner is authorized to use the documents,  
19 materials, or other information in the furtherance of any regulatory  
20 or legal action brought as a part of the commissioner's official  
21 duties. The commissioner shall not otherwise make the documents,  
22 materials, or other information public without the prior written  
23 consent of the insurer. This section does not require written consent  
24 of the insurer before the commissioner shares or receives  
25 confidential documents, materials, or other corporate governance  
26 annual disclosure related information under subsection (3) of this  
27 section to assist in the performance of the commissioner's regular  
28 duties.

29 (2) Neither the commissioner nor any person who received  
30 documents, materials, or other corporate governance annual disclosure  
31 related information, through examination or otherwise, while acting  
32 under the authority of the commissioner, or with whom the documents,  
33 materials, or other information are shared under this chapter are  
34 permitted or required to testify in any private civil action  
35 concerning any confidential documents, materials, or information  
36 subject to subsection (1) of this section.

37 (3) In order to assist in the performance of the commissioner's  
38 regulatory duties, the commissioner:

1 (a) May, upon request, share documents, materials, or other  
2 corporate governance annual disclosure related information including  
3 confidential and privileged documents, materials, or information  
4 subject to subsection (1) of this section, including proprietary and  
5 trade secret documents and materials with other state, federal, and  
6 international financial regulatory agencies, including members of any  
7 supervisory college as defined in RCW 48.31B.037, with the national  
8 association of insurance commissioners, and with third-party  
9 consultants under section 6 of this act, provided that the recipient  
10 agrees in writing to maintain the confidentiality and privileged  
11 status of the corporate governance annual disclosure related  
12 documents, materials, or other information and has verified in  
13 writing the legal authority to maintain confidentiality; and

14 (b) May receive documents, materials, and other corporate  
15 governance annual disclosure related information, including otherwise  
16 confidential and privileged documents, materials, or information,  
17 including proprietary and trade secret information or documents, from  
18 regulatory officials of other state, federal, and international  
19 financial regulatory agencies, including members of any supervisory  
20 college as defined in RCW 48.31B.037, and from the national  
21 association of insurance commissioners, and shall maintain as  
22 confidential or privileged any documents, materials, or other  
23 information received with notice or the understanding that it is  
24 confidential or privileged under the laws of the jurisdiction that is  
25 the source of the documents, materials, or information.

26 (4) The sharing of information and documents by the commissioner  
27 under this chapter does not constitute a delegation of regulatory  
28 authority or rule making, and the commissioner is solely responsible  
29 for the administration, execution, and enforcement of this chapter.

30 (5) A waiver of any applicable privilege or claim of  
31 confidentiality in the documents, proprietary and trade secret  
32 materials, or other corporate governance annual disclosure related  
33 information does not occur as a result of disclosure of the corporate  
34 governance annual disclosure related information or documents to the  
35 commissioner under this section or as a result of sharing as  
36 authorized in this chapter.

37 NEW SECTION. **Sec. 6.** (1) The commissioner may retain at the  
38 insurer's expense, third-party consultants, including attorneys,  
39 actuaries, accountants, and other experts not otherwise part of the

1 commissioner's staff as may be reasonably necessary to assist the  
2 commissioner in reviewing the corporate governance annual disclosure  
3 and related information or the insurer's compliance with this  
4 chapter.

5 (2) Any persons retained under subsection (1) of this section is  
6 under the direction and control of the commissioner and is acting in  
7 a purely advisory capacity.

8 (3) The national association of insurance commissioners and  
9 third-party consultants are subject to the same confidentiality  
10 standards and requirements as the commissioner.

11 (4) As part of the retention process, a third-party consultant  
12 must verify to the commissioner, with notice to the insurer, that it  
13 is free of a conflict of interest and that it has internal procedures  
14 in place to monitor compliance with a conflict and to comply with the  
15 confidentiality standards and requirements of this chapter.

16 (5) A written agreement with either the national association of  
17 insurance commissioners or a third-party consultant, or both,  
18 governing the sharing and use of information provided under this  
19 chapter must contain the following provisions and expressly require  
20 the written consent of the insurer prior to making public information  
21 provided under this chapter:

22 (a) Specific procedures and protocols for maintaining the  
23 confidentiality and security of corporate governance annual  
24 disclosure related information shared with the national association  
25 of insurance commissioner or a third-party consultant under this  
26 chapter;

27 (b) Procedures and protocols for sharing by the national  
28 association of insurance commissioners only with other state  
29 regulators from states in which the insurance group has domiciled  
30 insurers. The agreement must provide that the recipient agrees in  
31 writing to maintain the confidentiality and privileged status of the  
32 corporate governance annual disclosure related documents, materials,  
33 or other information and has verified in writing the legal authority  
34 to maintain confidentiality;

35 (c) A provision specifying that ownership of the corporate  
36 governance annual disclosure related information shared with the  
37 national association of insurance commissioners or a third-party  
38 consultant remains with the commissioner and the national association  
39 of insurance commissioners or third-party consultant's use of the  
40 information is subject to the direction of the commissioner;

1 (d) A provision that prohibits the national association of  
2 insurance commissioners or a third-party consultant from storing the  
3 information shared under this chapter in a permanent database after  
4 the underlying analysis is completed;

5 (e) A provision requiring the national association of insurance  
6 commissioners or a third-party consultant to provide prompt notice to  
7 the commissioner and to the insurer or insurance group regarding any  
8 subpoena, request for disclosure, or request for production of the  
9 insurer's corporate governance annual disclosure related information;  
10 and

11 (f) A requirement that the national association of insurance  
12 commissioners or a third-party consultant consent to intervention by  
13 an insurer in any judicial or administrative action in which the  
14 national association of insurance commissioners or a third-party  
15 consultant may be required to disclose confidential information about  
16 the insurer shared with the national association of insurance  
17 commissioners or third-party consultant under this chapter.

18 NEW SECTION. **Sec. 7.** Any insurer failing, without just cause,  
19 to timely file the corporate governance annual disclosure as required  
20 by this chapter is required, after notice and hearing under chapters  
21 48.04 and 34.05 RCW, to pay a penalty of five hundred dollars for  
22 each day's delay, to be recovered by the commissioner and the penalty  
23 must be paid to the general fund of this state. The maximum penalty  
24 under this section is one hundred thousand dollars. The commissioner  
25 may reduce the penalty if the insurer demonstrates to the  
26 commissioner that the imposition of the penalty would constitute a  
27 financial hardship to the insurer.

28 NEW SECTION. **Sec. 8.** The commissioner may, under chapter 34.05  
29 RCW, adopt rules to implement and administer this chapter, including  
30 the national association of insurance commissioners' corporate  
31 governance annual disclosure model rule.

32 **Sec. 9.** RCW 42.56.400 and 2017 3rd sp.s. c 30 s 2 and 2017 c 193  
33 s 2 are each reenacted and amended to read as follows:

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

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

4 (2) Information obtained and exempted or withheld from public  
5 inspection by the health care authority under RCW 41.05.026, whether  
6 retained by the authority, transferred to another state purchased  
7 health care program by the authority, or transferred by the authority  
8 to a technical review committee created to facilitate the  
9 development, acquisition, or implementation of state purchased health  
10 care under chapter 41.05 RCW;

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

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

15 (5) Information provided under RCW 48.05.510 through 48.05.535,  
16 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and  
17 48.46.600 through 48.46.625;

18 (6) Examination reports and information obtained by the  
19 department of financial institutions from banks under RCW 30A.04.075,  
20 from savings banks under RCW 32.04.220, from savings and loan  
21 associations under RCW 33.04.110, from credit unions under RCW  
22 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and  
23 from securities brokers and investment advisers under RCW 21.20.100,  
24 all of which is confidential and privileged information;

25 (7) Information provided to the insurance commissioner under RCW  
26 48.110.040(3);

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

30 (9) Documents, materials, or information obtained by the  
31 insurance commissioner under RCW 48.31B.015(2) (l) and (m),  
32 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential  
33 and privileged;

34 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
35 7.70.140 that, alone or in combination with any other data, may  
36 reveal the identity of a claimant, health care provider, health care  
37 facility, insuring entity, or self-insurer involved in a particular  
38 claim or a collection of claims. For the purposes of this subsection:

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

1 (b) "Health care facility" has the same meaning as in RCW  
2 48.140.010(6).

3 (c) "Health care provider" has the same meaning as in RCW  
4 48.140.010(7).

5 (d) "Insuring entity" has the same meaning as in RCW  
6 48.140.010(8).

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

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

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

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

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

16 (15) Documents, materials, or information obtained by the  
17 insurance commissioner under RCW 48.17.595;

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

21 (17) Documents, materials, or information obtained by the  
22 insurance commissioner in the commissioner's capacity as receiver  
23 under RCW 48.31.025 and 48.99.017, which are records under the  
24 jurisdiction and control of the receivership court. The commissioner  
25 is not required to search for, log, produce, or otherwise comply with  
26 the public records act for any records that the commissioner obtains  
27 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as  
28 a receiver, except as directed by the receivership court;

29 (18) Documents, materials, or information obtained by the  
30 insurance commissioner under RCW 48.13.151;

31 (19) Data, information, and documents provided by a carrier  
32 pursuant to section 1, chapter 172, Laws of 2010;

33 (20) Information in a filing of usage-based insurance about the  
34 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

35 (21) Data, information, and documents(~~(, other than those~~  
36 ~~described in RCW 48.02.210(2),)~~) that are submitted to the office of  
37 the insurance commissioner by an entity providing health care  
38 coverage pursuant to RCW 28A.400.275 (~~(and 48.02.210)~~);

39 (22) Data, information, and documents obtained by the insurance  
40 commissioner under RCW 48.29.017;

1 (23) Information not subject to public inspection or public  
2 disclosure under RCW 48.43.730(5);

3 (24) Documents, materials, or information obtained by the  
4 insurance commissioner under chapter 48.05A RCW;

5 (25) Documents, materials, or information obtained by the  
6 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),  
7 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,  
8 materials, or information independently qualify for exemption from  
9 disclosure as documents, materials, or information in possession of  
10 the commissioner pursuant to a financial conduct examination and  
11 exempt from disclosure under RCW 48.02.065; (~~and~~))

12 (26) Nonpublic personal health information obtained by, disclosed  
13 to, or in the custody of the insurance commissioner, as provided in  
14 RCW 48.02.068; (~~and~~))

15 (27) Data, information, and documents obtained by the insurance  
16 commissioner under RCW 48.02.230; and

17 (28) Documents, materials, or other information, including the  
18 corporate annual disclosure obtained by the insurance commissioner  
19 under section 3 of this act.

20 NEW SECTION. Sec. 10. If any provision of this chapter other  
21 than section 6 of this act, or its application to any person or  
22 circumstances is held invalid, the remainder of the chapter or the  
23 application of the provision to other persons or circumstances is not  
24 affected.

25 NEW SECTION. Sec. 11. (1) The first filing of the corporate  
26 governance annual disclosure is 2019.

27 (2) This act takes effect January 1, 2019.

28 NEW SECTION. Sec. 12. Sections 1 through 8 of this act  
29 constitute a new chapter in Title 48 RCW.

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