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**Financial Institutions &  
Insurance Committee**

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**SHB 1085**

**Brief Description:** Providing confidentiality to certain insurance commissioner examinations.

**Sponsors:** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Benson and Simpson, G.; by request of Insurance Commissioner).

**Brief Summary of Substitute Bill**

- Exempts the Insurance Commissioner from the disclosure requirements of the Public Disclosure Act regarding information obtained from an insurer in the course of a financial or market conduct examination, subject to certain limitations.

**Hearing Date:** 1/23/04

**Staff:** Carrie Tellefson (786-7127).

**Background:**

The Public Disclosure Act (Act) requires state agencies to make all documents available to the public unless specifically exempted by statute. However, the Insurance Commissioner (Commissioner) is exempt from the requirements of the Act with respect to certain categories of confidential information obtained in the course of its official regulatory duties. The Legislature authorized this exemption in 2001 in response to federal laws prohibiting federal agencies from sharing information with a state unless the state has regulations ensuring that the information will remain confidential. As a result, the Commissioner may share information with out-of-state regulators and obtain access to federal records.

Protected information includes information received from the National Association of Insurance Commissioners and information received from federal, state, and international governmental agencies. Information obtained from these sources is protected from disclosure only to the extent that it is confidential and/or privileged under the laws of the jurisdiction from which it originated. The Commissioner may share confidential information among these sources, provided the recipient agrees to maintain the confidentiality of the information.

Such confidential information cannot be subject to subpoena, is not discoverable through court procedures, and is not admissible as evidence in any private civil action. Furthermore, neither the

Commissioner nor his or her employees may be required to testify in any private civil action as to the substance of any of this confidential information.

The Commissioner may use and/or disclose the confidential information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

However, information obtained by the Commissioner in the course of his/her own investigation or examination of an insurer is not subject to these confidentiality protections and must therefore be disclosed to the public under the Act.

**Summary of Bill:**

Generally, information the Commissioner obtains from an insurer in the course of a financial or market conduct examination is exempt from the disclosure requirements of the Public Disclosure Act. However, following official notice and an opportunity for legal challenge, information that results in agency action may be publicly disclosed, depending on the outcome of the legal challenge. Agency action is broadly defined and interpreted under Chapter 34.05 RCW and includes licensing, implementing or enforcing a statute, adoption or implementation of agency rules, imposing sanctions, or granting or withholding benefits.

Upon a request for disclosure of information received during a financial or market conduct examination in which agency action has occurred, the Commissioner must give the entity whose information would be subject to disclosure five days notice before publicly disclosing the information. The notified party may seek injunctive relief to prevent disclosure by petitioning the Thurston County Superior Court (Court). The Court must privately review the information requested in the petition and — if the petitioner has demonstrated a good cause for doing so — the Court shall allow the petitioner to have access to the requested information. If granted access, the petitioner must not disclose the information to any other person, absent a court order allowing such disclosure. After a formal court hearing, the Court must allow public disclosure of the information, provided the Court finds that there is a public interest sufficient to justify such disclosure.

Information related to a financial or market conduct examination undertaken as a result of a change in control or ownership of an insurer or health carrier shall be disclosed, unless: (1) the information is otherwise privileged or exempted from public disclosure; and (2) the commissioner finds that the public interest in nondisclosure outweighs the public interest in disclosure.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2004.