

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5806

68th Legislature
2024 Regular Session

Passed by the Senate February 2, 2024
Yeas 49 Nays 0

President of the Senate

Passed by the House February 28, 2024
Yeas 95 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5806** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5806

Passed Legislature - 2024 Regular Session

State of Washington

68th Legislature

2024 Regular Session

By Senate Business, Financial Services, Gaming & Trade (originally sponsored by Senators Kuderer, Hunt, Dhingra, Hasegawa, and Nobles)

READ FIRST TIME 01/24/24.

1 AN ACT Relating to the confidentiality of insurance company data;
2 and amending RCW 48.02.065.

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

4 **Sec. 1.** RCW 48.02.065 and 2015 c 122 s 15 are each amended to
5 read as follows:

6 (1) Documents, materials, or other information as described in
7 ~~((either subsection (5) or (6), or both,))~~ subsections (5), (6), (7),
8 and (8) of this section are confidential by law and privileged, are
9 not subject to public disclosure under chapter 42.56 RCW, and are not
10 subject to subpoena directed to the commissioner or any person who
11 received documents, materials, or other information while acting
12 under the authority of the commissioner. The commissioner is
13 authorized to use such documents, materials, or other information in
14 the furtherance of any regulatory or legal action brought as a part
15 of the commissioner's official duties. The confidentiality and
16 privilege created by this section and RCW 42.56.400(8) applies only
17 to the commissioner, any person acting under the authority of the
18 commissioner, the national association of insurance commissioners and
19 its affiliates and subsidiaries, regulatory and law enforcement
20 officials of other states and nations, the federal government, and
21 international authorities.

1 (2) Neither the commissioner nor any person who received
2 documents, materials, or other information while acting under the
3 authority of the commissioner is permitted or required to testify in
4 any private civil action concerning any confidential and privileged
5 documents, materials, or information subject to subsection (1) of
6 this section.

7 (3) The commissioner:

8 (a) May share documents, materials, or other information,
9 including the confidential and privileged documents, materials, or
10 information subject to subsection (1) of this section, with (i) the
11 national association of insurance commissioners and its affiliates
12 and subsidiaries, (~~and~~) (ii) regulatory and law enforcement
13 officials of other states and nations, the federal government, and
14 international authorities, and (iii) agencies of this state, if the
15 recipient agrees to maintain the confidentiality and privileged
16 status of the document, material, or other information;

17 (b) May receive documents, materials, or information, including
18 otherwise either confidential or privileged, or both, documents,
19 materials, or information, from (i) the national association of
20 insurance commissioners and its affiliates and subsidiaries, and (ii)
21 regulatory and law enforcement officials of other states and nations,
22 the federal government, and international authorities and shall
23 maintain as confidential and privileged any document, material, or
24 information received that is either confidential or privileged, or
25 both, under the laws of the jurisdiction that is the source of the
26 document, material, or information; and

27 (c) May enter into agreements governing the sharing and use of
28 information consistent with this subsection.

29 (4) No waiver of an existing privilege or claim of
30 confidentiality in the documents, materials, or information may occur
31 as a result of disclosure to the commissioner under this section or
32 as a result of sharing as authorized in subsection (3) of this
33 section.

34 (5) Documents, materials, or information, which is either
35 confidential or privileged, or both, which has been provided to the
36 commissioner by (a) the national association of insurance
37 commissioners and its affiliates and subsidiaries, (b) regulatory or
38 law enforcement officials of other states and nations, the federal
39 government, or international authorities, or (c) agencies of this
40 state, is confidential and privileged only if the documents,

1 materials, or information is protected from disclosure by the
2 applicable laws of the jurisdiction that is the source of the
3 document, material, or information.

4 (6) Working papers, documents, materials, or information produced
5 by, obtained by, or disclosed to the commissioner or any other person
6 in the course of a financial or market conduct examination, or in the
7 course of financial analysis or market conduct desk audit, are not
8 required to be disclosed by the commissioner unless cited by the
9 commissioner in connection with an agency action as defined in RCW
10 34.05.010(3). The commissioner shall notify a party that produced the
11 documents, materials, or information five business days before
12 disclosure in connection with an agency action. The notified party
13 may seek injunctive relief in any Washington state superior court to
14 prevent disclosure of any documents, materials, or information it
15 believes is confidential or privileged. In civil actions between
16 private parties or in criminal actions, disclosure to the
17 commissioner under this section does not create any privilege or
18 claim of confidentiality or waive any existing privilege or claim of
19 confidentiality.

20 (7) Documents, materials, or information provided to the
21 commissioner by the federal government related to emergency
22 management, hazard mitigation, and the national flood insurance
23 program are confidential by law and privileged, and are not subject
24 to public disclosure under chapter 42.56 RCW.

25 (8) Data requested by the commissioner from property and casualty
26 entities regulated by the commissioner for the purpose of
27 understanding and studying insurance market conditions outside the
28 context of market conduct action is confidential by law and
29 privileged and is not subject to public disclosure under chapter
30 42.56 RCW. Nothing in this section prohibits the commissioner from
31 preparing and publishing reports, analysis, or other documents using
32 the data received from individual property and casualty companies so
33 long as the data in the report is in aggregate form and does not
34 permit the identification of information related to individual
35 companies. Data in the aggregate form are deemed open records
36 available for public inspection. Nothing in this section affects,
37 limits, or amends the commissioner's authority under chapter 48.37
38 RCW.

39 (9)(a) After receipt of a public disclosure request, the
40 commissioner shall disclose the documents, materials, or information

1 under subsection (6) of this section that relate to a financial or
2 market conduct examination undertaken as a result of a proposed
3 change of control of a nonprofit or mutual health insurer governed in
4 whole or in part by chapter 48.31B RCW.

5 (b) The commissioner is not required to disclose the documents,
6 materials, or information in (a) of this subsection if:

7 (i) The documents, materials, or information are otherwise
8 privileged or exempted from public disclosure; or

9 (ii) The commissioner finds that the public interest in
10 disclosure of the documents, materials, or information is outweighed
11 by the public interest in nondisclosure in that particular instance.

12 ~~((8))~~ (10) Any person may petition a Washington state superior
13 court to allow inspection of information exempt from public
14 disclosure under subsection (6) of this section when the information
15 is connected to allegations of negligence or malfeasance by the
16 commissioner related to a financial or market conduct examination.
17 The court shall conduct an in-camera review after notifying the
18 commissioner and every party that produced the information. The court
19 may order the commissioner to allow the petitioner to have access to
20 the information provided the petitioner maintains the confidentiality
21 of the information. The petitioner must not disclose the information
22 to any other person, except upon further order of the court. After
23 conducting a regular hearing, the court may order that the
24 information can be disclosed publicly if the court finds that there
25 is a public interest in the disclosure of the information and the
26 exemption of the information from public disclosure is clearly
27 unnecessary to protect any individual's right of privacy or any vital
28 governmental function.

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