
SUBSTITUTE HOUSE BILL 1085

State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 03/05/03.

1 AN ACT Relating to providing confidentiality to certain insurance
2 commissioner examinations; amending RCW 48.02.065; and providing an
3 effective date.

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

5 **Sec. 1.** RCW 48.02.065 and 2001 c 57 s 1 are each amended to read
6 as follows:

7 (1) Documents, materials, or other information as described in
8 subsection (5) of this section are confidential by law and privileged,
9 are not subject to public disclosure under chapter 42.17 RCW, and are
10 not subject to subpoena directed to the commissioner or any person who
11 received documents, materials, or other information while acting under
12 the authority of the commissioner. The commissioner is authorized to
13 use such documents, materials, or other information in the furtherance
14 of any regulatory or legal action brought as a part of the
15 commissioner's official duties. The confidentiality and privilege
16 created by this section and RCW 42.17.31916 applies only to the
17 commissioner, any person acting under the authority of the
18 commissioner, the national association of insurance commissioners and

1 its affiliates and subsidiaries, regulatory and law enforcement
2 officials of other states and nations, the federal government, and
3 international authorities.

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

9 (3) The commissioner:

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

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

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

30 (4) No waiver of an existing privilege or claim of confidentiality
31 in the documents, materials, or information may occur as a result of
32 disclosure to the commissioner under this section or as a result of
33 sharing as authorized in subsection (3) of this 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 commissioners
37 and its affiliates and subsidiaries, (b) regulatory or law enforcement
38 officials of other states and nations, the federal government, or

1 international authorities, or (c) agencies of this state, is
2 confidential and privileged only if the documents, materials, or
3 information is protected from disclosure by the applicable laws of the
4 jurisdiction that is the source of the document, material, or
5 information.

6 (6)(a) Working papers, documents, materials, or information
7 produced by, obtained by, or disclosed to the commissioner or any other
8 person in the course of a financial or market conduct examination are
9 not required to be disclosed by the commissioner unless cited by the
10 commissioner in connection with an agency action as defined in RCW
11 34.05.010(3).

12 (b) The commissioner shall notify a party that produced the
13 documents, materials, or information five business days before
14 disclosure in connection with an agency action. The notified party may
15 seek injunctive relief to prevent disclosure of any documents,
16 materials, or information it believes is confidential or privileged in
17 a court of competent jurisdiction. In civil actions between private
18 parties or in criminal actions, disclosure to the commissioner under
19 this section does not create any privilege or claim of confidentiality
20 or waive any existing privilege or claim of confidentiality.

21 (7) The commissioner shall disclose the documents, materials, or
22 information under subsection (6) of this section related to a financial
23 or market conduct examination undertaken as a result of a proposed
24 change of control governed in whole or in part by chapter 48.31B or
25 48.31C RCW, after receipt of a public disclosure request, unless (a)
26 the document, material, or information is otherwise privileged or
27 exempted from public disclosure, and (b) the commissioner finds that
28 the public interest in disclosure of the document, material, or
29 information is outweighed by the public interest in nondisclosure in
30 that particular instance.

31 (8) Any person may petition the superior court of Thurston county
32 for information exempt from public disclosure under subsection (6) of
33 this section. The court shall conduct an in camera review and, based
34 on a showing of good cause, shall order the commissioner to allow
35 access to the information by the petitioner, provided the petitioner
36 maintains the confidentiality of the information and does not disclose
37 the information to any other person, except upon further order of the
38 court. After reviewing the information and conducting a regular

1 hearing, the court shall order public disclosure of the information if
2 the court finds for cause shown that there is a public interest in the
3 disclosure of the information.

4 NEW SECTION. **Sec. 2.** This act takes effect January 1, 2004.

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