

SHB 2842 - H AMD 1075

By Representative Kirby

ADOPTED 02/12/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 48.31 RCW  
4 to read as follows:

5 (1) Documents, materials, or other information that the  
6 commissioner obtains under this chapter in the commissioner's capacity  
7 as a receiver as defined in RCW 48.99.010(12), are records under the  
8 jurisdiction and control of the receivership court. These records are  
9 confidential by law and privileged, are not subject to chapter 42.56 or  
10 40.14 RCW, and are not subject to subpoena directed to the commissioner  
11 or any person who received documents, materials, or other information  
12 while acting under the authority of the commissioner. The commissioner  
13 is authorized to use such documents, materials, or other information in  
14 the furtherance of any regulatory or legal action brought as a part of  
15 the commissioner's official duties. The confidentiality and privilege  
16 created by this section and RCW 42.56.400(17) is not waived if  
17 confidential and privileged information under this section is shared  
18 with any person acting under the authority of the commissioner,  
19 representatives of insurance guaranty associations that may have  
20 statutory obligations as a result of the insolvency of an insurer, the  
21 national association of insurance commissioners and its affiliates and  
22 subsidiaries, regulatory and law enforcement officials of other states  
23 and nations, the federal government, and international authorities.

24 (2) Neither the commissioner nor any person who received documents,  
25 materials, or other information while acting under the authority of the  
26 commissioner as receiver is required to testify in any private civil  
27 action concerning any confidential and privileged documents, materials,  
28 or information subject to subsection (1) of this section.

29 (3) Any person who can demonstrate a legal interest in the  
30 receivership estate or a reasonable suspicion of negligence or

1 malfeasance by the commissioner related to an insurer receivership may  
2 file a motion in the receivership matter to allow inspection of private  
3 company information or documents otherwise not subject to disclosure  
4 under subsection (1) of this section. The court shall conduct an in-  
5 camera review after notifying the commissioner and every party that  
6 produced the information. The court may order the commissioner to  
7 allow the petitioner to have access to the information provided the  
8 petitioner maintains the confidentiality of the information. The  
9 petitioner must not disclose the information to any other person,  
10 except upon further order of the court. After conducting a hearing,  
11 the court may order that the information can be disclosed publicly if  
12 the court finds that there is a public interest in the disclosure of  
13 the information and protection of the information from public  
14 disclosure is clearly unnecessary to protect any individual's right of  
15 privacy, or any company's proprietary information, and the commissioner  
16 has not demonstrated that disclosure would impair any vital  
17 governmental function, or the receiver's ability to manage the estate.

18 (4) The confidentiality and privilege of documents, materials, or  
19 other information obtained by the receiver set forth in subsections (1)  
20 and (2) of this section does not apply to litigation to which the  
21 insurer in receivership is a party. In such instances, discovery is  
22 governed by the Washington rules of civil procedure.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.99 RCW  
24 to read as follows:

25 (1) Documents, materials, or other information that the  
26 commissioner obtains under this chapter in the commissioner's capacity  
27 as a receiver, are records under the jurisdiction and control of the  
28 receivership court. These records are confidential by law and  
29 privileged, are not subject to chapter 42.56 or 40.14 RCW, and are not  
30 subject to subpoena directed to the commissioner or any person who  
31 received documents, materials, or other information while acting under  
32 the authority of the commissioner. The commissioner is authorized to  
33 use such documents, materials, or other information in the furtherance  
34 of any regulatory or legal action brought as a part of the  
35 commissioner's official duties. The confidentiality and privilege  
36 created by this section and RCW 42.56.400(17) is not waived if  
37 confidential and privileged information under this section is shared

1 with any person acting under the authority of the commissioner,  
2 representatives of insurance guaranty associations that may have  
3 statutory obligations as a result of the insolvency of an insurer, the  
4 national association of insurance commissioners and its affiliates and  
5 subsidiaries, regulatory and law enforcement officials of other states  
6 and nations, the federal government, and international authorities.

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

12 (3) Any person who can demonstrate a legal interest in the  
13 receivership estate or a reasonable suspicion of negligence or  
14 malfeasance by the commissioner related to an insurer receivership may  
15 file a motion in the receivership matter to allow inspection of private  
16 company information or documents not subject to public disclosure under  
17 subsection (1) of this section. The court shall conduct an in-camera  
18 review after notifying the commissioner and every party that produced  
19 the information. The court may order the commissioner to allow the  
20 petitioner to have access to the information, provided the petitioner  
21 maintains the confidentiality of the information. The petitioner must  
22 not disclose the information to any other person, except upon further  
23 order of the court. After conducting a hearing, the court may order  
24 that the information can be disclosed if the court finds that there is  
25 a public interest in the disclosure of the information and the  
26 protection of the information from public disclosure is clearly  
27 unnecessary to protect any individual's right of privacy, or any  
28 company's proprietary information, and the commissioner has not  
29 demonstrated that the disclosure would impair any vital governmental  
30 function, the receivership estate, or the receiver's ability to manage  
31 the estate.

32 (4) The confidentiality and privilege of documents, materials or  
33 other information obtained by the receiver set forth in subsections (1)  
34 and (2) of this section does not apply to litigation to which the  
35 insurer in receivership is a party. In such instances, discovery is  
36 governed by the Washington rules of civil procedure.

1       **Sec. 3.** RCW 42.56.400 and 2009 c 104 s 23 are each amended to read  
2 as follows:

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

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

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

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

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

19       (5) Information provided under RCW 48.05.510 through 48.05.535,  
20 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
21 through 48.46.625;

22       (6) Examination reports and information obtained by the department  
23 of financial institutions from banks under RCW 30.04.075, from savings  
24 banks under RCW 32.04.220, from savings and loan associations under RCW  
25 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
26 and sellers under RCW 31.45.030(3), and from securities brokers and  
27 investment advisers under RCW 21.20.100, all of which is confidential  
28 and privileged information;

29       (7) Information provided to the insurance commissioner under RCW  
30 48.110.040(3);

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

34       (9) Confidential proprietary and trade secret information provided  
35 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
36 48.31C.070;

37       (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
38 7.70.140 that, alone or in combination with any other data, may reveal

1 the identity of a claimant, health care provider, health care facility,  
2 insuring entity, or self-insurer involved in a particular claim or a  
3 collection of claims. For the purposes of this subsection:

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

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

7 (c) "Health care provider" has the same meaning as in RCW  
8 48.140.010(7).

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

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

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

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

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

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

19 (15) Documents, materials, or information obtained by the insurance  
20 commissioner under RCW 48.17.595; (~~and~~)

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

24 (17) Documents, materials, or information obtained by the insurance  
25 commissioner in the commissioner's capacity as receiver under sections  
26 1 and 2 of this act, which are records under the jurisdiction and  
27 control of the receivership court. The commissioner is not required to  
28 search for, log, produce, or otherwise comply with the public records  
29 act for any records that the commissioner obtains under chapters 48.31  
30 and 48.99 RCW in the commissioner's capacity as a receiver, except as  
31 directed by the receivership court."

32 Correct the title.

EFFECT: Removes language stating that the records received by the  
Commissioner while acting as a receiver are not public records. Adds

language that puts these records under the control of the receivership court. Provides an exception to any confidentiality or privilege related to the records in relation to any litigation to which the insurer in receivership is a party. Provides that in those circumstances where the insurer in receivership is a party to litigation, the rules of civil procedure are the controlling authority. States that the Commissioner is not required to comply with the requirements of the Public Records Act regarding records that are obtained by the Commissioner while acting as a receiver but are under the control of a receivership court, unless ordered to do so by the receivership court.

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