
HOUSE BILL 2461

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Kirby and Ryu; by request of Insurance Commissioner

Read first time 01/17/14. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to the financial solvency of insurance companies;
2 amending RCW 42.56.400, 48.02.065, 48.13.061, 48.18.545, 48.18.547,
3 48.19.035, 48.38.010, 48.97.005, 48.125.140, 48.155.010, 48.155.015,
4 42.56.400, and 42.56.400; reenacting and amending RCW 42.56.400; adding
5 new sections to chapter 48.31B RCW; adding a new chapter to Title 48
6 RCW; creating new sections; repealing RCW 48.31B.005, 48.31B.010,
7 48.31B.015, 48.31B.020, 48.31B.025, 48.31B.030, 48.31B.035, 48.31B.040,
8 48.31B.045, 48.31B.050, 48.31B.055, 48.31B.060, 48.31B.065, 48.31B.070,
9 48.31B.900, 48.31B.901, 48.31B.902, 48.31C.010, 48.31C.020, 48.31C.030,
10 48.31C.040, 48.31C.050, 48.31C.060, 48.31C.070, 48.31C.080, 48.31C.090,
11 48.31C.100, 48.31C.110, 48.31C.120, 48.31C.130, 48.31C.140, 48.31C.150,
12 48.31C.160, 48.31C.900, and 48.31C.901; prescribing penalties;
13 providing effective dates; and providing an expiration date.

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

15 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
16 section apply throughout this chapter unless the context clearly
17 requires otherwise.

18 (1) "Affiliate" means an affiliate of, or person affiliated with,

1 a specific person, and includes a person that directly, or indirectly
2 through one or more intermediaries, controls, or is controlled by, or
3 is under common control with, the person specified.

4 (2) "Commissioner" means the insurance commissioner, the
5 commissioner's deputies, or the office of the insurance commissioner,
6 as appropriate.

7 (3) "Control" means as follows:

8 (a) For a for-profit person, "control" (including the terms
9 "controlling," "controlled by," and "under common control with") means
10 the possession, direct or indirect, of the power to direct or cause the
11 direction of the management and policies of a person, whether through
12 the ownership of voting securities, by contract other than a commercial
13 contract for goods or nonmanagement services, or otherwise, unless the
14 power is the result of an official position with or corporate office
15 held by the person. Control exists if any person, directly or
16 indirectly, owns, controls, holds with the power to vote, or holds
17 proxies representing, ten percent or more of the voting securities of
18 any other person. This may be rebutted by a showing made in the manner
19 provided by section 5(11) of this act that control does not exist in
20 fact. The commissioner may determine, after furnishing all persons in
21 interest notice and opportunity to be heard and making specific
22 findings of fact to support the determination, that control exists in
23 fact, notwithstanding the absence of a presumption to that effect;

24 (b) For a nonprofit corporation organized under chapters 24.03 and
25 24.06 RCW, control exists if a person, directly or indirectly, owns,
26 controls, holds with the power to vote, or holds proxies representing
27 a majority of voting rights of the person or the power to elect or
28 appoint a majority of the board of directors, trustees, or other
29 governing body of the person, unless the power is the result of an
30 official position of, or corporate office held by, the person; and

31 (c) Control includes either permanent or temporary control.

32 (4) "Enterprise risk" means any activity, circumstance, event, or
33 series of events involving one or more affiliates of an insurer that,
34 if not remedied promptly, is likely to have a material adverse effect
35 upon the financial condition or liquidity of the insurer or its
36 insurance holding company system as a whole including, but not limited
37 to, anything that would cause the insurer's risk-based capital to fall

1 into company action level as set forth in RCW 48.05.440 or 48.43.310 or
2 would cause the insurer to be in hazardous financial condition as
3 defined in WAC 284-16-310.

4 (5) "Insurance holding company system" means a system that consists
5 of two or more affiliated persons, one or more of which is an insurer.

6 (6) "Insurer" includes an insurer authorized under chapter 48.05
7 RCW, a fraternal mutual insurer or society holding a license under RCW
8 48.36A.290, a health care service contractor registered under chapter
9 48.44 RCW, a health maintenance organization registered under chapter
10 48.46 RCW, and a self-funded multiple employer welfare arrangement
11 under chapter 48.125 RCW, as well as all persons engaged as, or
12 purporting to be engaged as insurers, fraternal benefit societies,
13 health care service contractors, health maintenance organizations, or
14 self-funded multiple employer welfare arrangements in this state, and
15 to persons in process of organization to become insurers, fraternal
16 benefit societies, health care service contractors, health maintenance
17 organizations, or self-funded multiple employer welfare arrangements,
18 except that it does not include agencies, authorities, or
19 instrumentalities of the United States, its possessions and
20 territories, the Commonwealth of Puerto Rico, the District of Columbia,
21 or a state or political subdivision of a state.

22 (7) "Person" means an individual, a corporation, a limited
23 liability company, a partnership, an association, a joint stock
24 company, a trust, an unincorporated organization, any similar entity or
25 any combination of the foregoing acting in concert, but does not
26 include any joint venture partnership exclusively engaged in owning,
27 managing, leasing, or developing real or tangible personal property.

28 (8) "Securityholder" means a securityholder of a specified person
29 who owns any security of such person, including common stock, preferred
30 stock, debt obligations, and any other security convertible into or
31 evidencing the right to acquire any of the foregoing.

32 (9) "Subsidiary" means a subsidiary of a specified person who is an
33 affiliate controlled by such person directly or indirectly through one
34 or more intermediaries.

35 (10) "Supervisory colleges" means a forum for cooperation and
36 communication among involved regulators and international supervisors
37 facilitating the effectiveness of supervision of entities which belong

1 to an insurance group and supervision of the group as a whole on a
2 groupwide basis and improving the legal entity supervision of the
3 entities within the insurance group.

4 (11) "Voting security" includes any security convertible into or
5 evidencing a right to acquire a voting security.

6 NEW SECTION. **Sec. 2.** SUBSIDIARIES OF INSURERS. (1) A domestic
7 insurer, either by itself or in cooperation with one or more persons,
8 may organize or acquire one or more subsidiaries. The subsidiaries may
9 conduct any kind of business or businesses authorized in RCW
10 48.13.061(4) and subject to the percentage limitations contained in
11 chapter 48.13 RCW.

12 (2) If an insurer ceases to control a subsidiary, it shall dispose
13 of any investment in that subsidiary within three years from the time
14 of the cessation of control or within such further time as the
15 commissioner may prescribe, unless at any time after the investment was
16 made, the investment met the requirements for investment under any
17 other section of this title, and the insurer notified the commissioner.

18 NEW SECTION. **Sec. 3.** ACQUISITION OF CONTROL OF OR MERGER WITH
19 DOMESTIC INSURER. (1)(a) No person other than the issuer may make a
20 tender offer for or a request or invitation for tenders of, or enter
21 into any agreement to exchange securities for, seek to acquire, or
22 acquire, in the open market or otherwise, any voting security of a
23 domestic insurer if, after the consummation thereof, such person would,
24 directly or indirectly (or by conversion or by exercise of any right to
25 acquire) be in control of the insurer, and no person may enter into an
26 agreement to merge with or otherwise to acquire control of a domestic
27 insurer or any person controlling a domestic insurer unless, at the
28 time the offer, request, or invitation is made or the agreement is
29 entered into, or prior to the acquisition of the securities if no offer
30 or agreement is involved, such person has filed with the commissioner
31 and has sent to the insurer a statement containing the information
32 required by this section and the offer, request, invitation, agreement,
33 or acquisition has been approved by the commissioner in the manner
34 prescribed in this chapter.

35 (b) For purposes of this section, any controlling person of a
36 domestic insurer seeking to divest its controlling interest in the

1 domestic insurer, in any manner, must file with the commissioner, with
2 a copy to the insurer, notice of its proposed divestiture at least
3 thirty days prior to the cessation of control. If the statement
4 referred to in (a) of this subsection is otherwise filed, this
5 subsection does not apply.

6 (c) With respect to a transaction subject to this section, the
7 acquiring person must also file a preacquisition notification with the
8 commissioner, which must contain the information set forth in section
9 4(3)(a) of this act. A failure to file the notification may be subject
10 to penalties specified in section 4(5)(c) of this act.

11 (d) For purposes of this section a domestic insurer includes any
12 person controlling a domestic insurer unless the person, as determined
13 by the commissioner, is either directly or through its affiliates
14 primarily engaged in business other than the business of insurance.
15 For the purposes of this section, person does not include any
16 securities broker holding, in the usual and customary broker's
17 function, less than twenty percent of the voting securities of an
18 insurance company or of any person which controls an insurance company.

19 (2) The statement to be filed with the commissioner must be made
20 under oath or affirmation and contain the following:

21 (a) The name and address of each person by whom or on whose behalf
22 the merger or other acquisition of control referred to in subsection
23 (1) of this section is to be effected and referred to in this section
24 as the acquiring party; and

25 (i) If the person is an individual, his or her principal occupation
26 and all offices and positions held during the past five years, and any
27 conviction of crimes other than minor traffic violations during the
28 past ten years;

29 (ii) If the person is not an individual, a report of the nature of
30 its business operations during the past five years or for the lesser
31 period as the person and any predecessors shall have been in existence;
32 an informative description of the business intended to be done by the
33 person and the person's subsidiaries; and a list of all individuals who
34 are or who have been selected to become directors or executive officers
35 of the person, or who perform or will perform functions appropriate to
36 such positions. The list shall include for each individual the
37 information required by (a)(i) of this subsection;

1 (b) The source, nature, and amount of the consideration used or to
2 be used in effecting the merger or other acquisition of control, a
3 description of any transaction where funds were or are to be obtained
4 for any such purpose (including any pledge of the insurer's stock, or
5 the stock of any of its subsidiaries or controlling affiliates), and
6 the identity of persons furnishing consideration. However, when a
7 source of consideration is a loan made in the lender's ordinary course
8 of business, the identity of the lender must remain confidential, if
9 the person filing the statement so requests;

10 (c) Fully audited financial information as to the earnings and
11 financial condition of each acquiring party for the preceding five
12 fiscal years of each acquiring party (or for such lesser period as the
13 acquiring party and any predecessors have been in existence), and
14 similar unaudited information as of a date not earlier than ninety days
15 prior to the filing of the statement;

16 (d) Any plans or proposals which each acquiring party may have to
17 liquidate the insurer, to sell its assets or merge or consolidate it
18 with any person, or to make any other material change in its business
19 or corporate structure or management;

20 (e) The number of shares of any security referred to in subsection
21 (1) of this section which each acquiring party proposes to acquire, and
22 the terms of the offer, request, invitation, agreement, or acquisition
23 referred to in subsection (1) of this section, and a statement as to
24 the method by which the fairness of the proposal was arrived at;

25 (f) The amount of each class of any security referred to in
26 subsection (1) of this section which is beneficially owned or
27 concerning which there is a right to acquire beneficial ownership by
28 each acquiring party;

29 (g) A full description of any contracts, arrangements, or
30 understandings with respect to any security referred to in subsection
31 (1) of this section in which any acquiring party is involved, including
32 but not limited to transfer of any of the securities, joint ventures,
33 loan or option arrangements, puts or calls, guarantees of loans,
34 guarantees against loss or guarantees of profits, division of losses or
35 profits, or the giving or withholding of proxies. The description must
36 identify the persons with whom the contracts, arrangements, or
37 understandings have been entered into;

1 (h) A description of the purchase of any security referred to in
2 subsection (1) of this section during the twelve calendar months
3 preceding the filing of the statement by any acquiring party, including
4 the dates of purchase, names of the purchasers, and consideration paid
5 or agreed to be paid;

6 (i) A description of any recommendations to purchase any security
7 referred to in subsection (1) of this section made during the twelve
8 calendar months preceding the filing of the statement by any acquiring
9 party, or by anyone based upon interviews or at the suggestion of the
10 acquiring party;

11 (j) Copies of all tender offers for, requests, or invitations for
12 tenders of, exchange offers for, and agreements to acquire or exchange
13 any securities referred to in subsection (1) of this section, and, if
14 distributed, of additional soliciting material relating to them;

15 (k) The term of any agreement, contract, or understanding made with
16 or proposed to be made with any broker-dealer as to solicitation of
17 securities referred to in subsection (1) of this section for tender,
18 and the amount of any fees, commissions, or other compensation to be
19 paid to broker-dealers with regard thereto;

20 (l) An agreement by the person required to file the statement
21 referred to in subsection (1) of this section that it will provide the
22 annual report, specified in section 5(12) of this act, for so long as
23 control exists;

24 (m) An acknowledgement by the person required to file the statement
25 referred to in subsection (1) of this section that the person and all
26 subsidiaries within its control in the insurance holding company system
27 will provide information to the commissioner upon request as necessary
28 to evaluate enterprise risk to the insurer;

29 (n) Such additional information as the commissioner may by rule
30 prescribe as necessary or appropriate for the protection of
31 policyholders of the insurer or in the public interest;

32 (o) If the person required to file the statement referred to in
33 subsection (1) of this section is a partnership, limited partnership,
34 syndicate, or other group, information required by (a) through (n) of
35 this subsection may be required by the commissioner to be given with
36 respect to each partner of the partnership or limited partnership, each
37 member of the syndicate or group, and each person who controls the
38 partner or member. If any partner, member, or person is a corporation

1 or the person required to file the statement referred to in subsection
2 (1) of this section is a corporation, the commissioner may require that
3 the information required by (a) through (n) of this subsection be given
4 with respect to the corporation, each officer and director of the
5 corporation, and each person who is directly or indirectly the
6 beneficial owner of more than ten percent of the outstanding voting
7 securities of the corporation; and

8 (p) If any material change occurs in the facts set forth in the
9 statement filed with the commissioner and sent to the insurer pursuant
10 to this section, an amendment setting forth the change, together with
11 copies of all documents and other material relevant to the change, must
12 be filed with the commissioner and sent to the insurer within two
13 business days after the person learns of the change.

14 (3) If any offer, request, invitation, agreement, or acquisition
15 referred to in subsection (1) of this section is proposed to be made by
16 means of a registration statement under the securities act of 1933 or
17 in circumstances requiring the disclosure of similar information under
18 the securities exchange act of 1934, or under a state law requiring
19 similar registration or disclosure, the person required to file the
20 statement referred to in subsection (1) of this section may utilize the
21 documents in furnishing the information required by that statement.

22 (4)(a) The commissioner shall approve any merger or other
23 acquisition of control referred to in subsection (1) of this section
24 unless, after a public hearing, the commissioner finds that:

25 (i) After the change of control, the domestic insurer referred to
26 in subsection (1) of this section would not be able to satisfy the
27 requirements for the issuance of a license to write the line or lines
28 of insurance for which it is presently licensed;

29 (ii) The effect of the merger or other acquisition of control would
30 be substantially to lessen competition in insurance in this state or
31 tend to create a monopoly. In applying the competitive standard in
32 this subsection (4)(a)(ii):

33 (A) The informational requirements of section 4(3)(a) of this act
34 and the standards of section 4(4)(b) of this act apply;

35 (B) The merger or other acquisition may not be disapproved if the
36 commissioner finds that any of the situations meeting the criteria
37 provided by section 4(4)(c) of this act exist; and

1 (C) The commissioner may condition the approval of the merger or
2 other acquisition on the removal of the basis of disapproval within a
3 specified period of time;

4 (iii) The financial condition of any acquiring party is such as
5 might jeopardize the financial stability of the insurer, or prejudice
6 the interest of its policyholders;

7 (iv) The plans or proposals which the acquiring party has to
8 liquidate the insurer, sell its assets, or consolidate or merge it with
9 any person, or to make any other material change in its business or
10 corporate structure or management, are unfair and unreasonable to
11 policyholders of the insurer and not in the public interest;

12 (v) The competence, experience, and integrity of those persons who
13 would control the operation of the insurer are such that it would not
14 be in the interest of policyholders of the insurer and of the public to
15 permit the merger or other acquisition of control; or

16 (vi) The acquisition is likely to be hazardous or prejudicial to
17 the insurance-buying public.

18 (b) The commissioner shall approve an exchange or other acquisition
19 of control referred to in this section within sixty days after he or
20 she declares the statement filed under this section to be complete and
21 after holding a public hearing. At the hearing, the person filing the
22 statement, the insurer, and any person whose significant interest is
23 determined by the commissioner to be affected may present evidence,
24 examine and cross-examine witnesses, and offer oral and written
25 arguments, and in connection therewith may conduct discovery
26 proceedings in the same manner as is allowed in the superior court of
27 this state. All discovery proceedings must be concluded not later than
28 three business days before the commencement of the public hearing.

29 (c) If the proposed acquisition of control will require the
30 approval of more than one commissioner, the public hearing referred to
31 in (b) of this subsection may be held on a consolidated basis upon
32 request of the person filing the statement referred to in subsection
33 (1) of this section. Such person shall file the statement referred to
34 in subsection (1) of this section with the national association of
35 insurance commissioners within five days of making the request for a
36 public hearing. A commissioner may opt out of a consolidated hearing,
37 and shall provide notice to the applicant of the opt-out within ten
38 days of the receipt of the statement referred to in subsection (1) of

1 this section. A hearing conducted on a consolidated basis shall be
2 public and shall be held within the United States before the
3 commissioners of the states in which the insurers are domiciled. Such
4 commissioners shall hear and receive evidence. A commissioner may
5 attend such hearing, in person, or by telecommunication.

6 (d) In connection with a change of control of a domestic insurer,
7 any determination by the commissioner that the person acquiring control
8 of the insurer shall be required to maintain or restore the capital of
9 the insurer to the level required by the laws and rules of this state
10 shall be made not later than sixty days after the date of notification
11 of the change in control submitted pursuant to subsection (1)(a) of
12 this section.

13 (e) The commissioner may retain at the acquiring person's expense
14 any attorneys, actuaries, accountants, and other experts not otherwise
15 a part of the commissioner's staff as may be reasonably necessary to
16 assist the commissioner in reviewing the proposed acquisition of
17 control.

18 (5) The provisions of this section do not apply to:

19 (a) Any transaction which is subject to RCW 48.31.010, dealing with
20 the merger or consolidation of two or more insurers;

21 (b) Any offer, request, invitation, agreement or acquisition which
22 the commissioner by order exempts as not having been made or entered
23 into for the purpose and not having the effect of changing or
24 influencing the control of a domestic insurer, or as otherwise not
25 comprehended within the purposes of this section.

26 (6) The following are violations of this section:

27 (a) The failure to file any statement, amendment, or other material
28 required to be filed pursuant to subsection (1) or (2) of this section;
29 or

30 (b) The effectuation or any attempt to effectuate an acquisition of
31 control of, divestiture of, or merger with a domestic insurer unless
32 the commissioner has given approval.

33 (7) The courts of this state are hereby vested with jurisdiction
34 over every person not resident, domiciled, or authorized to do business
35 in this state who files a statement with the commissioner under this
36 section, and overall actions involving such person arising out of
37 violations of this section, and each such person is deemed to have
38 performed acts equivalent to and constituting an appointment by the

1 person of the commissioner to be his or her true and lawful attorney
2 upon whom may be served all lawful process in any action, suit, or
3 proceeding arising out of violations of this section. Copies of all
4 lawful process must be served on the commissioner and transmitted by
5 registered or certified mail by the commissioner to the person at his
6 or her last known address.

7 NEW SECTION. **Sec. 4.** ACQUISITIONS INVOLVING INSURERS NOT
8 OTHERWISE COVERED. (1) The following definitions apply for the
9 purposes of this section only:

10 (a) "Acquisition" means any agreement, arrangement, or activity the
11 consummation of which results in a person acquiring directly or
12 indirectly the control of another person, and includes but is not
13 limited to the acquisition of voting securities, the acquisition of
14 assets, bulk reinsurance, and mergers.

15 (b) An "involved insurer" includes an insurer which either acquires
16 or is acquired, is affiliated with an acquirer or acquired, or is the
17 result of a merger.

18 (2)(a) Except as exempted in (b) of this subsection, this section
19 applies to any acquisition in which there is a change in control of an
20 insurer authorized to do business in this state.

21 (b) This section does not apply to the following:

22 (i) A purchase of securities solely for investment purposes so long
23 as the securities are not used by voting or otherwise to cause or
24 attempt to cause the substantial lessening of competition in any
25 insurance market in this state. If a purchase of securities results in
26 a presumption of control under section 1(3) of this act, it is not
27 solely for investment purposes unless the commissioner of the insurer's
28 state of domicile accepts a disclaimer of control or affirmatively
29 finds that control does not exist and the disclaimer action or
30 affirmative finding is communicated by the domiciliary commissioner to
31 the commissioner of this state;

32 (ii) The acquisition of a person by another person when both
33 persons are neither directly nor through affiliates primarily engaged
34 in the business of insurance, if preacquisition notification is filed
35 with the commissioner in accordance with subsection (3)(a) of this
36 section thirty days prior to the proposed effective date of the

1 acquisition. However, such preacquisition notification is not required
2 for exclusion from this section if the acquisition would otherwise be
3 excluded from this section by this subsection (2)(b);

4 (iii) The acquisition of already affiliated persons;

5 (iv) An acquisition if, as an immediate result of the acquisition:

6 (A) In no market would the combined market share of the involved
7 insurers exceed five percent of the total market;

8 (B) There would be no increase in any market share; or

9 (C) In no market would the:

10 (I) Combined market share of the involved insurers exceed twelve
11 percent of the total market; and

12 (II) The market share increase by more than two percent of the
13 total market.

14 For the purpose of this subsection (2)(b)(iv), a market means
15 direct written insurance premium in this state for a line of business
16 as contained in the annual statement required to be filed by insurers
17 licensed to do business in this state;

18 (v) An acquisition for which a preacquisition notification would be
19 required pursuant to this section due solely to the resulting effect on
20 the ocean marine insurance line of business;

21 (vi) An acquisition of an insurer whose domiciliary commissioner
22 affirmatively finds that the insurer is in failing condition; there is
23 a lack of feasible alternative to improving such condition; the public
24 benefits of improving the insurer's condition through the acquisition
25 exceed the public benefits that would arise from not lessening
26 competition; and the findings are communicated by the domiciliary
27 commissioner to the commissioner of this state.

28 (3) An acquisition covered by subsection (2) of this section may be
29 subject to an order pursuant to subsection (5) of this section unless
30 the acquiring person files a preacquisition notification and the
31 waiting period has expired. The acquired person may file a
32 preacquisition notification.

33 (a) The preacquisition notification shall be in such form and
34 contain such information as prescribed by the national association of
35 insurance commissioners relating to those markets which, under
36 subsection (2)(b)(iv) of this section, cause the acquisition not to be
37 exempted from this section. The commissioner may require additional
38 material and information as necessary to determine whether the proposed

1 acquisition, if consummated, would violate the competitive standard of
2 subsection (4) of this section. The required information may include
3 an opinion of an economist as to the competitive impact of the
4 acquisition in this state accompanied by a summary of the education and
5 experience of that economist indicating his or her ability to render an
6 informed opinion.

7 (b) The waiting period required begins on the date of receipt by
8 the commissioner of a preacquisition notification and shall end on the
9 earlier of the thirtieth day after the date of receipt, or termination
10 of the waiting period by the commissioner. Prior to the end of the
11 waiting period, the commissioner on a one-time basis may require the
12 submission of additional needed information relevant to the proposed
13 acquisition, in which event the waiting period shall end on the earlier
14 of the thirtieth day after receipt of the additional information by the
15 commissioner or termination of the waiting period by the commissioner.

16 (4)(a) The commissioner may enter an order under subsection (5)(a)
17 of this section with respect to an acquisition if there is substantial
18 evidence that the effect of the acquisition may be substantially to
19 lessen competition in any line of insurance in this state or tend to
20 create a monopoly or if the insurer fails to file adequate information
21 in compliance with subsection (3) of this section.

22 (b) In determining whether a proposed acquisition would violate the
23 competitive standard of (a) of this subsection, the commissioner shall
24 consider the following:

25 (i) Any acquisition covered under subsection (2) of this section
26 involving two or more insurers competing in the same market is prima
27 facie evidence of violation of the competitive standards, as follows:

28 (A) If the market is highly concentrated and the involved insurers
29 possess the following shares of the market:

	Insurer A	Insurer B
30		
31	4%	4% or more
32	10%	2% or more
33	15%	1% or more

34 (B) Or, if the market is not highly concentrated and the involved
35 insurers possess the following shares of the market:

	Insurer A	Insurer B
1		
2	5%	5% or more
3	10%	4% or more
4	15%	3% or more
5	19%	1% or more

6 A highly concentrated market is one in which the share of the four
7 largest insurers is seventy-five percent or more of the market.
8 Percentages not shown in the tables are interpolated proportionately to
9 the percentages that are shown. If more than two insurers are
10 involved, exceeding the total of the two columns in the table is prima
11 facie evidence of violation of the competitive standard in (a) of this
12 subsection. For the purpose of this subsection (4)(b)(i), the insurer
13 with the largest share of the market is insurer A, as set forth in (a)
14 of this subsection.

15 (ii) There is a significant trend toward increased concentration
16 when the aggregate market share of any grouping of the largest insurers
17 in the market, from the two largest to the eight largest, has increased
18 by seven percent or more of the market over a period of time extending
19 from any base year five to ten years prior to the acquisition up to the
20 time of the acquisition. Any acquisition or merger covered under
21 subsection (2) of this section involving two or more insurers competing
22 in the same market is prima facie evidence of violation of the
23 competitive standard in subsection (4) of this section if:

24 (A) There is a significant trend toward increased concentration in
25 the market;

26 (B) One of the insurers involved is one of the insurers in a
27 grouping of large insurers showing the requisite increase in the market
28 share; and

29 (C) Another involved insurer's market is two percent or more.

30 (iii) For the purposes of this subsection (4)(b):

31 (A) "Insurer" includes any company or group of companies under
32 common management, ownership, or control;

33 (B) "Market" means the relevant product and geographical markets.
34 In determining the relevant product and geographical markets, the
35 commissioner shall give due consideration to, among other things, the

1 definitions or guidelines, if any, promulgated by the national
2 association of insurance commissioners and to information, if any,
3 submitted by parties to the acquisition. In the absence of sufficient
4 information to the contrary, the relevant product market is assumed to
5 be the direct written insurance premium for a line of business, such
6 line being that used in the annual statement required to be filed by
7 insurers doing business in this state, and the relevant geographical
8 market is assumed to be this state;

9 (C) The burden of showing prima facie evidence of violation of the
10 competitive standard rests upon the commissioner.

11 (iv) Even though an acquisition is not prima facie violative of the
12 competitive standard under (b)(i) and (ii) of this subsection, the
13 commissioner may establish the requisite anticompetitive effect based
14 upon other substantial evidence. Even though an acquisition is prima
15 facie violative of the competitive standard under (b)(i) and (ii) of
16 this subsection, a party may establish the absence of the requisite
17 anticompetitive effect based upon other substantial evidence. Relevant
18 factors in making a determination under this subsection include, but
19 are not limited to, the following: Market shares, volatility of
20 ranking of market leaders, number of competitors, concentration, trend
21 of concentration in the industry, and ease of entry and exit into the
22 market.

23 (c) An order may not be entered under subsection (5)(a) of this
24 section if:

25 (i) The acquisition will yield substantial economies of scale or
26 economies in resource utilization that cannot be feasibly achieved in
27 any other way, and the public benefits which would arise from such
28 economies exceed the public benefits which would arise from not
29 lessening competition; or

30 (ii) The acquisition will substantially increase the availability
31 of insurance, and the public benefits of the increase exceed the public
32 benefits which would arise from not lessening competition.

33 (5)(a)(i) If an acquisition violates the standards of this section,
34 the commissioner may enter an order:

35 (A) Requiring an involved insurer to cease and desist from doing
36 business in this state with respect to the line or lines of insurance
37 involved in the violation; or

1 (B) Denying the application of an acquired or acquiring insurer for
2 a license to do business in this state.

3 (ii) Such an order may not be entered unless:

4 (A) There is a hearing;

5 (B) Notice of the hearing is issued prior to the end of the waiting
6 period and not less than fifteen days prior to the hearing; and

7 (C) The hearing is concluded and the order is issued no later than
8 sixty days after the date of the filing of the preacquisition
9 notification with the commissioner.

10 (iii) Every order shall be accompanied by a written decision of
11 the commissioner setting forth findings of fact and conclusions of law.

12 (iv) An order pursuant to this subsection (5)(a) does not apply if
13 the acquisition is not consummated.

14 (b) Any person who violates a cease and desist order of the
15 commissioner under (a) of this subsection and while the order is in
16 effect may, after notice and hearing and upon order of the
17 commissioner, be subject at the discretion of the commissioner to one
18 or more of the following:

19 (i) A monetary fine of not more than ten thousand dollars for every
20 day of violation; or

21 (ii) Suspension or revocation of the person's license.

22 (c) Any insurer or other person who fails to make any filing
23 required by this section, and who also fails to demonstrate a good
24 faith effort to comply with any filing requirement, is subject to a
25 fine of not more than fifty thousand dollars.

26 (6) Sections 10 (2) and (3) and 12 of this act do not apply to
27 acquisitions covered under this section.

28 NEW SECTION. **Sec. 5.** REGISTRATION OF INSURERS. (1) Every insurer
29 that is authorized to do business in this state and is a member of an
30 insurance holding company system shall register with the commissioner,
31 except a foreign insurer subject to registration requirements and
32 standards adopted by statute or rule in the jurisdiction of its
33 domicile that are substantially similar to those contained in:

34 (a) This section;

35 (b) Section 6 (1)(a), (2), and (4) of this act; and

36 (c) Either section 6(1)(b) of this act or a provision such as the
37 following: Each registered insurer shall keep current the information

1 required to be disclosed in its registration statement by reporting all
2 material changes or additions within fifteen days after the end of the
3 month in which it learns of each change or addition.

4 Any insurer which is subject to registration under this section
5 shall register within fifteen days after it becomes subject to
6 registration, and annually thereafter by April 30th of each year for
7 the previous calendar year, unless the commissioner for good cause
8 shown extends the time for registration, and then within the extended
9 time. The commissioner may require any insurer authorized to do
10 business in the state which is a member of an insurance holding company
11 system, and which is not subject to registration under this section, to
12 furnish a copy of the registration statement, the summary specified in
13 subsection (3) of this section or other information filed by the
14 insurance company with the insurance regulatory authority of its
15 domiciliary jurisdiction.

16 (2) Every insurer subject to registration shall file the
17 registration statement with the commissioner on a form and in a format
18 prescribed by the national association of insurance commissioners,
19 which shall contain the following current information:

20 (a) The capital structure, general financial condition, ownership
21 and management of the insurer, and any person controlling the insurer;

22 (b) The identity and relationship of every member of the insurance
23 holding company system;

24 (c) The following agreements in force, and transactions currently
25 outstanding or which have occurred during the last calendar year
26 between the insurer and its affiliates:

27 (i) Loans, other investments, or purchases, sales, or exchanges of
28 securities of the affiliates by the insurer or of the insurer by its
29 affiliates;

30 (ii) Purchases, sales, or exchange of assets;

31 (iii) Transactions not in the ordinary course of business;

32 (iv) Guarantees or undertakings for the benefit of an affiliate
33 which result in an actual contingent exposure of the insurer's assets
34 to liability, other than insurance contracts entered into in the
35 ordinary course of the insurer's business;

36 (v) All management agreements, service contracts, and all cost-
37 sharing arrangements;

38 (vi) Reinsurance agreements;

1 (vii) Dividends and other distributions to shareholders; and

2 (viii) Consolidated tax allocation agreements;

3 (d) Any pledge of the insurer's stock, including stock of any
4 subsidiary or controlling affiliate, for a loan made to any member of
5 the insurance holding company system;

6 (e) If requested by the commissioner, the insurer must include
7 financial statements of or within an insurance holding company system,
8 including all affiliates. Financial statements may include but are not
9 limited to annual audited financial statements filed with the United
10 States securities and exchange commission pursuant to the securities
11 act of 1933, as amended, or the securities exchange act of 1934, as
12 amended. An insurer required to file financial statements pursuant to
13 this subsection (2)(e) may satisfy the request by providing the
14 commissioner with the most recently filed parent corporation financial
15 statements that have been filed with the United States securities and
16 exchange commission;

17 (f) Other matters concerning transactions between registered
18 insurers and any affiliates as may be included from time to time in any
19 registration forms adopted or approved by the commissioner;

20 (g) Statements that the insurer's board of directors oversees
21 corporate governance and internal controls and that the insurer's
22 officers or senior management have approved, implemented, and continue
23 to maintain and monitor corporate governance and internal control
24 procedures; and

25 (h) Any other information required by the commissioner by rule.

26 (3) All registration statements shall contain a summary outlining
27 all items in the current registration statement representing changes
28 from the prior registration statement.

29 (4) No information need be disclosed on the registration statement
30 filed pursuant to subsection (2) of this section if the information is
31 not material for the purposes of this section. Unless the commissioner
32 by rule or order provides otherwise; sales, purchases, exchanges,
33 loans, or extensions of credit, investments, or guarantees involving
34 one-half of one percent or less of an insurer's admitted assets as of
35 December 31st next preceding is not material for purposes of this
36 section.

37 (5) Subject to section 6(2) of this act, each registered insurer
38 shall report to the commissioner all dividends and other distributions

1 to shareholders within five business days following the declaration and
2 fifteen business days before payment, and shall provide the
3 commissioner such other information as may be required by rule.

4 (6) Any person within an insurance holding company system subject
5 to registration is required to provide complete and accurate
6 information to an insurer, where the information is reasonably
7 necessary to enable the insurer to comply with the provisions of this
8 chapter.

9 (7) The commissioner shall terminate the registration of any
10 insurer which demonstrates that it no longer is a member of an
11 insurance holding company system.

12 (8) The commissioner may require or allow two or more affiliated
13 insurers subject to registration to file a consolidated registration
14 statement.

15 (9) The commissioner may allow an insurer which is authorized to do
16 business in this state and which is part of an insurance holding
17 company system to register on behalf of any affiliated insurer which is
18 required to register under subsection (1) of this section and to file
19 all information and material required to be filed under this section.

20 (10) This section does not apply to any insurer, information, or
21 transaction if and to the extent that the commissioner by rule or order
22 exempts the same from this section.

23 (11) Any person may file with the commissioner a disclaimer of
24 affiliation with any authorized insurer or a disclaimer may be filed by
25 the insurer or any member of an insurance holding company system. The
26 disclaimer shall fully disclose all material relationships and bases
27 for affiliation between the person and the insurer as well as the basis
28 for disclaiming the affiliation. A disclaimer of affiliation is deemed
29 to have been granted unless the commissioner, within thirty days
30 following receipt of a complete disclaimer, notifies the filing party
31 the disclaimer is disallowed. In the event of disallowance, the
32 disclaiming party may request an administrative hearing, which shall be
33 granted. The disclaiming party is relieved of its duty to register
34 under this section if approval of the disclaimer has been granted by
35 the commissioner, or if the disclaimer is deemed to have been approved.

36 (12) The ultimate controlling person of every insurer subject to
37 registration shall also file an annual enterprise risk report. The
38 report must, to the best of the ultimate controlling person's knowledge

1 and belief, identify the material risks within the insurance holding
2 company system that could pose enterprise risk to the insurer. The
3 report must be filed with the lead state commissioner of the insurance
4 holding company system as determined by the procedures within the
5 financial analysis handbook adopted by the national association of
6 insurance commissioners.

7 (13) The failure to file a registration statement or any summary of
8 the registration statement or enterprise risk filing required by this
9 section within the time specified for filing is a violation of this
10 section.

11 NEW SECTION. **Sec. 6.** STANDARDS AND MANAGEMENT OF AN INSURER
12 WITHIN AN INSURANCE HOLDING COMPANY SYSTEM. (1)(a) Transactions within
13 an insurance holding company system to which an insurer subject to
14 registration is a party are subject to the following standards:

15 (i) The terms must be fair and reasonable;

16 (ii) Agreements for cost-sharing services and management must
17 include such provisions as required by rule issued by the commissioner;

18 (iii) Charges or fees for services performed must be reasonable;

19 (iv) Expenses incurred and payment received must be allocated to
20 the insurer in conformity with customary insurance accounting practices
21 consistently applied;

22 (v) The books, accounts, and records of each party to all such
23 transactions must be so maintained as to clearly and accurately
24 disclose the nature and details of the transactions including such
25 accounting information as is necessary to support the reasonableness of
26 the charges or fees to the respective parties; and

27 (vi) The insurer's surplus as regards policyholders following any
28 dividends or distributions to shareholder affiliates must be reasonable
29 in relation to the insurer's outstanding liabilities and adequate to
30 meet its financial needs.

31 (b) The following transactions involving a domestic insurer and any
32 person in its insurance holding company system, including amendments or
33 modifications of affiliate agreements previously filed pursuant to this
34 section, which are subject to any materiality standards contained in
35 this subsection, may not be entered into unless the insurer has
36 notified the commissioner in writing of its intention to enter into the
37 transaction at least thirty days prior thereto, or such shorter period

1 as the commissioner may permit, and the commissioner has not
2 disapproved it within that period. The notice for amendments or
3 modifications must include the reasons for the change and the financial
4 impact on the domestic insurer. Informal notice must be reported,
5 within thirty days after a termination of a previously filed agreement,
6 to the commissioner for determination of the type of filing required,
7 if any.

8 (i) Sales, purchases, exchanges, loans, extensions of credit, or
9 investments, provided the transactions are equal to or exceed:

10 (A) With respect to nonlife insurers and not including health care
11 service contractors and health maintenance organizations, the lesser of
12 three percent of the insurer's admitted assets or twenty-five percent
13 of surplus as regards policyholders as of December 31st next preceding;

14 (B) With respect to life insurers, three percent of the insurer's
15 admitted assets as of December 31st next preceding;

16 (C) With respect to health care service contractors and health
17 maintenance organizations, the lesser of five percent of the insurer's
18 admitted assets or twenty-five percent of its capital and surplus or
19 net worth as of December 31st next preceding;

20 (ii) Loans or extensions of credit to any person who is not an
21 affiliate, where the insurer makes loans or extensions of credit with
22 the agreement or understanding that the proceeds of the transactions,
23 in whole or in substantial part, are to be used to make loans or
24 extensions of credit to, to purchase assets of, or to make investments
25 in, any affiliate of the insurer making the loans or extensions of
26 credit provided the transactions are equal to or exceed:

27 (A) With respect to nonlife insurers and not including health care
28 service contractors and health maintenance organizations, the lesser of
29 three percent of the insurer's admitted assets or twenty-five percent
30 of surplus as regards policyholders as of December 31st next preceding;

31 (B) With respect to life insurers, three percent of the insurer's
32 admitted assets as of December 31st next preceding;

33 (C) With respect to health care service contractors and health
34 maintenance organizations, the lesser of five percent of the insurer's
35 admitted assets or twenty-five percent of its capital and surplus or
36 net worth as of December 31st next preceding;

37 (iii) Reinsurance agreements or modifications thereto, including:

38 (A) All reinsurance pooling agreements;

1 (B) Agreements in which the reinsurance premium or a change in the
2 insurer's liabilities, or the projected reinsurance premium or a change
3 in the insurer's liabilities in any of the next three years, equals or
4 exceeds five percent of the insurer's surplus as regards policyholders,
5 as of December 31st next preceding, including those agreements which
6 may require as consideration the transfer of assets from an insurer to
7 a nonaffiliate, if an agreement or understanding exists between the
8 insurer and nonaffiliate that any portion of the assets will be
9 transferred to one or more affiliates of the insurer;

10 (iv) All management agreements, service contracts, tax allocation
11 agreements, guarantees, and all cost-sharing arrangements;

12 (v) Guarantees when made by a domestic insurer. However, a
13 guarantee which is quantifiable as to amount is not subject to the
14 notice requirements of this subsection (1)(b)(v) unless it exceeds the
15 lesser of one-half of one percent of the insurer's admitted assets or
16 ten percent of surplus as regards policyholders as of December 31st
17 next preceding. Further, all guarantees which are not quantifiable as
18 to amount are subject to the notice requirements of this subsection
19 (1)(b)(v);

20 (vi) Direct or indirect acquisitions or investments in a person
21 that controls the insurer or in an affiliate of the insurer in an
22 amount which, together with its present holdings in such investments,
23 exceeds two and one-half percent of the insurer's surplus to
24 policyholders. Direct or indirect acquisitions or investments in
25 subsidiaries acquired pursuant to chapter 48.13 RCW, or in
26 nonsubsidiary insurance affiliates that are subject to this act, are
27 exempt from this requirement; and

28 (vii) Any material transactions, specified by rule, which the
29 commissioner determines may adversely affect the interests of the
30 insurer's policyholders.

31 This subsection does not authorize or permit any transactions which, in
32 the case of an insurer not a member of the same insurance holding
33 company system, would be otherwise contrary to law.

34 (c) A domestic insurer may not enter into transactions which are
35 part of a plan or series of like transactions with persons within the
36 insurance holding company system if the purpose of those separate
37 transactions is to avoid the statutory threshold amount and thus avoid
38 the review that would occur otherwise. If the commissioner determines

1 that separate transactions were entered into over any twelve-month
2 period for that purpose, the commissioner may exercise his or her
3 authority under section 11 of this act.

4 (d) The commissioner, in reviewing transactions pursuant to (b) of
5 this subsection, shall consider whether the transactions comply with
6 the standards set forth in (a) of this subsection and whether they may
7 adversely affect the interests of policyholders.

8 (e) The commissioner must be notified within thirty days of any
9 investment of the domestic insurer in any one corporation if the total
10 investment in the corporation by the insurance holding company system
11 exceeds ten percent of the corporation's voting securities.

12 (2)(a) A domestic insurer shall not pay any extraordinary dividend
13 or make any other extraordinary distribution to its shareholders until
14 thirty days after the commissioner has received notice of the
15 declaration thereof and has not within that period disapproved the
16 payment, or until the commissioner has approved the payment within the
17 thirty-day period.

18 (b) For purposes of this section, an extraordinary dividend or
19 distribution includes any dividend or distribution of cash or other
20 property, whose fair market value together with that of other dividends
21 or distributions made within the preceding twelve months exceeds the
22 lesser of:

23 (i) Ten percent of the insurer's surplus as regards policyholders
24 or net worth as of December 31st next preceding; or

25 (ii) The net gain from operations of the insurer, if the insurer is
26 a life insurer, or the net income, if the insurer is not a life
27 insurer, not including realized capital gains, for the twelve-month
28 period ending December 31st next preceding, but shall not include pro
29 rata distributions of any class of the insurer's own securities.

30 (c) In determining whether a dividend or distribution is
31 extraordinary, an insurer other than a life insurer may carry forward
32 net income from the previous two calendar years that has not already
33 been paid out as dividends. This carry-forward is computed by taking
34 the net income from the second and third preceding calendar years, not
35 including realized capital gains, less dividends paid in the second and
36 immediate preceding calendar years.

37 (d) An insurer may declare an extraordinary dividend or
38 distribution which is conditional upon the commissioner's approval, and

1 the declaration shall confer no rights upon shareholders until (i) the
2 commissioner has approved the payment of the dividend or distribution
3 or (ii) the commissioner has not disapproved payment within the thirty-
4 day period referred to in (a) of this subsection.

5 (3)(a) Notwithstanding the control of a domestic insurer by any
6 person, the officers and directors of the insurer are not thereby
7 relieved of any obligation or liability to which they would otherwise
8 be subject by law, and the insurer must be managed so as to assure its
9 separate operating identity consistent with this title.

10 (b) This section does not preclude a domestic insurer from having
11 or sharing a common management or cooperative or joint use of
12 personnel, property, or services with one or more other persons under
13 arrangements meeting the standards of subsection (1)(a) of this
14 section.

15 (c) At least one-third of a domestic insurer's directors and at
16 least one-third of the members of each committee of the insurer's board
17 of directors must be persons who are not: (i) Officers or employees of
18 the insurer or of any entity that controls, is controlled by, or is
19 under common control with the insurer; or (ii) beneficial owners of a
20 controlling interest in the voting securities of the insurer or of an
21 entity that controls, is controlled by, or is under common control with
22 the insurer. A quorum for transacting business at a meeting of the
23 insurer's board of directors or any committee of the board of directors
24 must include at least one person with the qualifications described in
25 (a) of this subsection.

26 (d) The board of directors of a domestic insurer shall establish
27 one or more committees comprised solely of directors who are not
28 officers or employees of the insurer or of any entity controlling,
29 controlled by, or under common control with the insurer and who are not
30 beneficial owners of a controlling interest in the voting stock of the
31 insurer or any such entity. The committee or committees have
32 responsibility for nominating candidates for director for election by
33 shareholders or policyholders, evaluating the performance of officers
34 deemed to be principal officers of the insurer, and recommending to the
35 board of directors the selection and compensation of the principal
36 officers.

37 (e) The provisions of (c) and (d) of this subsection do not apply

1 to a domestic insurer if the person controlling the insurer has a board
2 of directors and committees thereof that meet the requirements of (c)
3 and (d) of this subsection with respect to such controlling entity.

4 (f) An insurer may make application to the commissioner for a
5 waiver from the requirements of this subsection, if the insurer's
6 annual direct written and assumed premium, excluding premiums reinsured
7 with the federal crop insurance corporation and federal flood program,
8 is less than three hundred million dollars. An insurer may also make
9 application to the commissioner for a waiver from the requirements of
10 this subsection based upon unique circumstances. The commissioner may
11 consider various factors including, but not limited to, the type of
12 business entity, volume of business written, availability of qualified
13 board members, or the ownership or organizational structure of the
14 entity.

15 (4) For purposes of this chapter, in determining whether an
16 insurer's surplus as regards policyholders is reasonable in relation to
17 the insurer's outstanding liabilities and adequate to meet its
18 financial needs, the following factors, among others, must be
19 considered:

20 (a) The size of the insurer as measured by its assets, capital and
21 surplus, reserves, premium writings, insurance in force, and other
22 appropriate criteria;

23 (b) The extent to which the insurer's business is diversified among
24 several lines of insurance;

25 (c) The number and size of risks insured in each line of business;

26 (d) The extent of the geographical dispersion of the insurer's
27 insured risks;

28 (e) The nature and extent of the insurer's reinsurance program;

29 (f) The quality, diversification, and liquidity of the insurer's
30 investment portfolio;

31 (g) The recent past and projected future trend in the size of the
32 insurer's investment portfolio;

33 (h) The surplus as regards policyholders maintained by other
34 comparable insurers;

35 (i) The adequacy of the insurer's reserves; and

36 (j) The quality and liquidity of investments in affiliates. The
37 commissioner may treat any such investment as a disallowed asset for

1 purposes of determining the adequacy of surplus as regards
2 policyholders whenever in the judgment of the commissioner the
3 investment so warrants.

4 NEW SECTION. **Sec. 7. EXAMINATION.** (1) Subject to the limitation
5 contained in this section and in addition to the powers which the
6 commissioner has under chapter 48.03 RCW relating to the examination of
7 insurers, the commissioner has the power to examine any insurer
8 registered under section 5 of this act and its affiliates to ascertain
9 the financial condition of the insurer, including the enterprise risk
10 to the insurer by the ultimate controlling party, or by any entity or
11 combination of entities within the insurance holding company system, or
12 by the insurance holding company system on a consolidated basis.

13 (2)(a) The commissioner may order any insurer registered under
14 section 5 of this act to produce such records, books, or other
15 information papers in the possession of the insurer or its affiliates
16 as are reasonably necessary to determine compliance with this title.

17 (b) To determine compliance with this title, the commissioner may
18 order any insurer registered under section 5 of this act to produce
19 information not in the possession of the insurer if the insurer can
20 obtain access to such information pursuant to contractual
21 relationships, statutory obligations, or other method. In the event
22 the insurer cannot obtain the information requested by the
23 commissioner, the insurer shall provide the commissioner a detailed
24 explanation of the reason that the insurer cannot obtain the
25 information and the identity of the holder of information. Whenever it
26 appears to the commissioner that the detailed explanation is without
27 merit, the commissioner may require, after notice and hearing, the
28 insurer to pay a fine of ten thousand dollars for each day's delay, or
29 may suspend or revoke the insurer's license. The commissioner shall
30 pay the fine collected under this section to the state treasurer for
31 deposit into the general fund.

32 (3) The commissioner may retain at the registered insurer's expense
33 such attorneys, actuaries, accountants, and other experts not otherwise
34 a part of the commissioner's staff as shall be reasonably necessary to
35 assist in the conduct of the examination under subsection (1) of this
36 section. Any persons so retained are under the direction and control
37 of the commissioner and act in a purely advisory capacity.

1 (4) Notwithstanding the provisions under RCW 48.03.060, each
2 registered insurer producing for examination records, books, and papers
3 pursuant to subsection (1) of this section is liable for and must pay
4 the expense of examination.

5 (5) In the event the insurer fails to comply with an order, the
6 commissioner has the power to examine the affiliates to obtain the
7 information. The commissioner also has the power to issue subpoenas,
8 to administer oaths, and to examine under oath any person for purposes
9 of determining compliance with this section. Upon the failure or
10 refusal of any person to obey a subpoena, the commissioner may petition
11 a court of competent jurisdiction, and upon proper showing, the court
12 may enter an order compelling the witness to appear and testify or
13 produce documentary evidence. Failure to obey the court order is
14 punishable as contempt of court. Every person is required to attend as
15 a witness at the place specified in the subpoena, when subpoenaed,
16 anywhere within the state. He or she is entitled to the same fees and
17 mileage, if claimed, as a witness as provided in RCW 48.03.070.

18 NEW SECTION. **Sec. 8.** SUPERVISORY COLLEGES. (1) With respect to
19 any insurer registered under section 5 of this act, and in accordance
20 with subsection (3) of this section, the commissioner has the power to
21 participate in a supervisory college for any domestic insurer that is
22 part of an insurance holding company system with international
23 operations in order to determine compliance by the insurer with this
24 title. The powers of the commissioner with respect to supervisory
25 colleges include, but are not limited to, the following:

- 26 (a) Initiating the establishment of a supervisory college;
27 (b) Clarifying the membership and participation of other
28 supervisors in the supervisory college;
29 (c) Clarifying the functions of the supervisory college and the
30 role of other regulators, including the establishment of a group-wide
31 supervisor;
32 (d) Coordinating the ongoing activities of the supervisory college,
33 including planning meetings, supervisory activities, and processes for
34 information sharing; and
35 (e) Establishing a crisis management plan.

36 (2) Each registered insurer subject to this section is liable for
37 and must pay the reasonable expenses of the commissioner's

1 participation in a supervisory college in accordance with subsection
2 (3) of this section, including reasonable travel expenses. For
3 purposes of this section, a supervisory college may be convened as
4 either a temporary or permanent forum for communication and cooperation
5 between the regulators charged with the supervision of the insurer or
6 its affiliates, and the commissioner may establish a regular assessment
7 to the insurer for the payment of these expenses.

8 (3) In order to assess the business strategy, financial position,
9 legal and regulatory position, risk exposure, risk management, and
10 governance processes, and as part of the examination of individual
11 insurers in accordance with section 7 of this act, the commissioner may
12 participate in a supervisory college with other regulators charged with
13 supervision of the insurer or its affiliates, including other state,
14 federal, and international regulatory agencies. The commissioner may
15 enter into agreements in accordance with section 9(3) of this act
16 providing the basis for cooperation between the commissioner and the
17 other regulatory agencies, and the activities of the supervisory
18 college. This section does not delegate to the supervisory college the
19 authority of the commissioner to regulate or supervise the insurer or
20 its affiliates within its jurisdiction.

21 NEW SECTION. **Sec. 9.** CONFIDENTIAL TREATMENT. (1) Documents,
22 materials, or other information in the possession or control of the
23 commissioner that are obtained by or disclosed to the commissioner or
24 any other person in the course of an examination or investigation made
25 pursuant to section 7 of this act and all information reported pursuant
26 to sections 5(12) and 8 of this act are confidential by law and
27 privileged, are not subject to chapter 42.56 RCW, are not subject to
28 subpoena, and are not subject to discovery or admissible in evidence in
29 any private civil action. However, the commissioner is authorized to
30 use the documents, materials, or other information in the furtherance
31 of any regulatory or legal action brought as a part of the
32 commissioner's official duties. The commissioner shall not otherwise
33 make the documents, materials, or other information public without the
34 prior written consent of the insurer to which it pertains unless the
35 commissioner, after giving the insurer and its affiliates who would be
36 affected thereby, notice and opportunity to be heard, determines that

1 the interest of policyholders, shareholders, or the public is served by
2 the publication thereof, in which event the commissioner may publish
3 all or any part in such manner as may be deemed appropriate.

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 or with whom such documents, materials, or other
7 information are shared pursuant to this chapter is permitted or may be
8 required to testify in any private civil action concerning any
9 confidential documents, materials, or information subject to subsection
10 (1) of this section.

11 (3) In order to assist in the performance of the commissioner's
12 duties, the commissioner:

13 (a) May share documents, materials, or other information, including
14 the confidential and privileged documents, materials, or information
15 subject to subsection (1) of this section, with other state, federal,
16 and international regulatory agencies, with the national association of
17 insurance commissioners and its affiliates and subsidiaries, with the
18 international association of insurance supervisors and the bank for
19 international settlements and its affiliates and subsidiaries, and with
20 state, federal, and international law enforcement authorities,
21 including members of any supervisory college described in section 8 of
22 this act, provided the recipient agrees in writing to maintain the
23 confidentiality and privileged status of the document, material, or
24 other information, and has verified in writing the legal authority to
25 maintain confidentiality;

26 (b) Notwithstanding (a) of this subsection, may only share
27 confidential and privileged documents, material, or information
28 reported pursuant to section 5(12) of this act with commissioners of
29 states having statutes or rules substantially similar to subsection (1)
30 of this section and who have agreed in writing not to disclose such
31 information;

32 (c) May receive documents, materials, or information, including
33 otherwise confidential and privileged documents, materials or
34 information from the national association of insurance commissioners
35 and its affiliates and subsidiaries, the international association of
36 insurance supervisors and the bank for international settlements and
37 its affiliates and subsidiaries, and from regulatory and law
38 enforcement officials of other foreign or domestic jurisdictions, and

1 shall maintain as confidential or privileged any document, material, or
2 information received with notice or the understanding that it is
3 confidential or privileged under the laws of the jurisdiction that is
4 the source of the document, material, or information; and

5 (d) Shall enter into written agreements with the national
6 association of insurance commissioners governing sharing and use of
7 information provided pursuant to this chapter consistent with this
8 subsection that shall:

9 (i) Specify procedures and protocols regarding the confidentiality
10 and security of information shared with the national association of
11 insurance commissioners and its affiliates and subsidiaries pursuant to
12 this chapter, including procedures and protocols for sharing by the
13 national association of insurance commissioners with other state,
14 federal, or international regulators including the international
15 association of insurance supervisors and the bank for international
16 settlements and its affiliates and subsidiaries;

17 (ii) Specify that ownership of information shared with the national
18 association of insurance commissioners and its affiliates and
19 subsidiaries pursuant to this chapter remains with the commissioner and
20 the national association of insurance commissioners' use of the
21 information is subject to the direction of the commissioner;

22 (iii) Require prompt notice to be given to an insurer whose
23 confidential information in the possession of the national association
24 of insurance commissioners pursuant to this chapter is subject to a
25 request or subpoena to the national association of insurance
26 commissioners for disclosure or production; and

27 (iv) Require the national association of insurance commissioners
28 and its affiliates and subsidiaries to consent to intervention by an
29 insurer in any judicial or administrative action in which the national
30 association of insurance commissioners and its affiliates and
31 subsidiaries may be required to disclose confidential information about
32 the insurer shared with the national association of insurance
33 commissioners and its affiliates and subsidiaries pursuant to this
34 chapter.

35 (4) The sharing of information by the commissioner pursuant to this
36 chapter does not constitute a delegation of regulatory authority or
37 rule making, and the commissioner is solely responsible for the

1 administration, execution, and enforcement of the provisions of this
2 chapter.

3 (5) No waiver of any applicable privilege or claim of
4 confidentiality in the documents, materials, or information shall occur
5 as a result of disclosure to the commissioner under this section or as
6 a result of sharing as authorized in subsection (3) of this section.

7 (6) Documents, materials, or other information in the possession or
8 control of the national association of insurance commissioners pursuant
9 to this chapter are confidential by law and privileged, are not subject
10 to chapter 42.56 RCW, are not subject to subpoena, and are not subject
11 to discovery or admissible in evidence in any private civil action.

12 NEW SECTION. **Sec. 10.** INJUNCTIONS, PROHIBITIONS AGAINST VOTING
13 SECURITIES, SEQUESTRATION OF VOTING SECURITIES. (1) Whenever it
14 appears to the commissioner that any insurer or any director, officer,
15 employee, or agent thereof has committed or is about to commit a
16 violation of this chapter or of any rule or order issued by the
17 commissioner, the commissioner may apply to the superior court for
18 Thurston county for an order enjoining the insurer or director,
19 officer, employee, or agent thereof from violating or continuing to
20 violate this chapter or any rule or order, and for such other equitable
21 relief as the nature of the case and the interest of the insurer's
22 policyholders, creditors, and shareholders or the public may require.

23 (2) No security which is the subject of any agreement or
24 arrangement regarding acquisition, or which is acquired or to be
25 acquired, in contravention of the provisions of this chapter or of any
26 rule or order issued by the commissioner may be voted at any
27 shareholder's meeting, or may be counted for quorum purposes, and any
28 action of shareholders requiring the affirmative vote of a percentage
29 of shares may be taken as though the securities were not issued and
30 outstanding; but no action taken at any such meeting may be invalidated
31 by the voting of the securities, unless the action would materially
32 affect control of the insurer or unless the courts of this state have
33 so ordered. If an insurer or the commissioner has reason to believe
34 that any security of the insurer has been or is about to be acquired in
35 contravention of the provisions of this chapter or of any rule or order
36 issued by the commissioner; the insurer or the commissioner may apply
37 to the superior court for Thurston county to enjoin any offer, request,

1 invitation, agreement, or acquisition made in contravention of section
2 3 of this act or any rule or order issued by the commissioner to enjoin
3 the voting of any security so acquired, to void any vote of the
4 security already cast at any meeting of shareholders and for such other
5 equitable relief as the nature of the case and the interest of the
6 insurer's policyholders, creditors, and shareholders or the public may
7 require.

8 (3) In any case where a person has acquired or is proposing to
9 acquire any voting securities in violation of this chapter or any rule
10 or order issued by the commissioner, the commissioner may refer the
11 matter to the prosecuting attorney of Thurston county or the county in
12 which the insurer has its principal place of business may, on such
13 notice as the court deems appropriate, upon the application of the
14 insurer or the commissioner, seize or sequester any voting securities
15 of the insurer owned directly or indirectly by the person, and issue
16 such order as may be appropriate to effectuate the provisions of this
17 chapter.

18 (4) For the purposes of this chapter the situs of the ownership of
19 the securities of domestic insurers is this state.

20 NEW SECTION. **Sec. 11.** SANCTIONS. (1) The commissioner shall
21 require any insurer failing, without just cause, to file any
22 registration statement as required in this chapter, after notice and
23 hearing, to pay a fine of not more than ten thousand dollars for each
24 day's delay, to be recovered by the commissioner and the fine collected
25 shall be transferred to the treasurer for deposit into the state
26 general fund. The maximum fine under this section is one million
27 dollars. The commissioner may reduce the fine if the insurer
28 demonstrates to the commissioner that the imposition of the fine would
29 constitute a financial hardship to the insurer.

30 (2) Every director or officer of an insurance holding company
31 system who knowingly violates, participates in, or assents to, or who
32 knowingly shall permit any of the officers or agents of the insurer to
33 engage in transactions or make investments which have not been properly
34 reported or submitted pursuant to sections 5(1) and 6(1)(b) or (2) of
35 this act, or which violate this chapter, shall pay, in their individual
36 capacity, a fine of not more than ten thousand dollars per violation,
37 after notice and hearing before the commissioner. In determining the

1 amount of the fine, the commissioner shall take into account the
2 appropriateness of the forfeiture with respect to the gravity of the
3 violation, the history of previous violations, and such other matters
4 as justice may require.

5 (3) Whenever it appears to the commissioner that any insurer
6 subject to this chapter or any director, officer, employee, or agent
7 thereof has engaged in any transaction or entered into a contract which
8 is subject to section 6 of this act and which would not have been
9 approved had the approval been requested, the commissioner may order
10 the insurer to cease and desist immediately any further activity under
11 that transaction or contract. After notice and hearing the
12 commissioner may also order the insurer to void any contracts and
13 restore the status quo if the action is in the best interest of the
14 policyholders, creditors, or the public.

15 (4) Whenever it appears to the commissioner that any insurer or any
16 director, officer, employee, or agent thereof has committed a willful
17 violation of this chapter, the commissioner may refer the matter to the
18 prosecuting attorney of Thurston county or the county in which the
19 principal office of the insurer is located. Any insurer who willfully
20 violates this chapter may be fined not more than one million dollars.
21 Any individual who willfully violates this chapter may be fined in his
22 or her individual capacity not more than ten thousand dollars, or be
23 imprisoned for not more than three years or both.

24 (5) Any officer, director, or employee of an insurance holding
25 company system who willfully and knowingly subscribes to or makes or
26 causes to be made any false statements or false reports or false
27 filings with the intent to deceive the commissioner in the performance
28 of his or her duties under this chapter, upon conviction shall be
29 imprisoned for not more than three years or fined not more than ten
30 thousand dollars or both. Any fines imposed shall be paid by the
31 officer, director, or employee in his or her individual capacity.

32 (6) Whenever it appears to the commissioner that any person has
33 committed a violation of section 3 of this act and which prevents the
34 full understanding of the enterprise risk to the insurer by affiliates
35 or by the insurance holding company system, the violation may serve as
36 an independent basis for disapproving dividends or distributions and
37 for placing the insurer under an order of supervision in accordance
38 with RCW 48.31.400.

1 NEW SECTION. **Sec. 12.** RECEIVERSHIP. Whenever it appears to the
2 commissioner that any person has committed a violation of this chapter
3 which so impairs the financial condition of a domestic insurer as to
4 threaten insolvency or make the further transaction of business by it
5 hazardous to its policyholders, creditors, shareholders, or the public,
6 then the commissioner may proceed as provided in chapters 48.31 and
7 48.99 RCW to take possessions of the property of the domestic insurer
8 and to conduct its business.

9 NEW SECTION. **Sec. 13.** RECOVERY. (1) If an order for liquidation
10 or rehabilitation of a domestic insurer has been entered, the receiver
11 appointed under the order has a right to recover on behalf of the
12 insurer, (a) from any parent corporation or holding company or person
13 or affiliate who otherwise controlled the insurer, the amount of
14 distributions (other than distributions of shares of the same class of
15 stock) paid by the insurer on its capital stock, or (b) any payment in
16 the form of a bonus, termination settlement, or extraordinary lump sum
17 salary adjustment made by the insurer or its subsidiary to a director,
18 officer, or employee, where the distribution or payment pursuant to (a)
19 or (b) of this subsection is made at any time during the one year
20 preceding the petition for liquidation, conservation or rehabilitation,
21 as the case may be, subject to the limitations of subsections (2), (3),
22 and (4) of this section.

23 (2) A distribution is not recoverable if the parent or affiliate
24 shows that when paid the distribution was lawful and reasonable, and
25 that the insurer did not know and could not reasonably have known that
26 the distribution might adversely affect the ability of the insurer to
27 fulfill its contractual obligations.

28 (3) Any person who was a parent corporation or holding company or
29 a person who otherwise controlled the insurer or affiliate at the time
30 the distributions were paid is liable up to the amount of distributions
31 or payments under subsection (1) of this section which the person
32 received. Any person who otherwise controlled the insurer at the time
33 the distributions were declared is liable up to the amount of
34 distributions that would have been received if they had been paid
35 immediately. If two or more persons are liable with respect to the
36 same distributions, they are jointly and severally liable.

1 (4) The maximum amount recoverable under this section is the amount
2 needed in excess of all other available assets of the impaired or
3 insolvent insurer to pay the contractual obligations of the impaired or
4 insolvent insurer and to reimburse any guaranty funds.

5 (5) To the extent that any person liable under subsection (3) of
6 this section is insolvent or otherwise fails to pay claims due from it,
7 its parent corporation or holding company or person who otherwise
8 controlled it at the time the distribution was paid is jointly and
9 severally liable for any resulting deficiency in the amount recovered
10 from the parent corporation or holding company or person who otherwise
11 controlled it.

12 NEW SECTION. **Sec. 14.** REVOCATION, SUSPENSION, OR NONRENEWAL OF
13 INSURER'S LICENSE. Whenever it appears to the commissioner that any
14 person has committed a violation of this chapter which makes the
15 continued operation of an insurer contrary to the interests of
16 policyholders or the public, the commissioner may, after giving notice
17 and an opportunity to be heard, suspend, revoke, or refuse to renew the
18 insurer's license or authority to do business in this state for such
19 period as the commissioner finds is required for the protection of
20 policyholders or the public. Any such determination must be
21 accompanied by specific findings of fact and conclusions of law.

22 NEW SECTION. **Sec. 15.** JUDICIAL REVIEW, MANDAMUS. (1) Any person
23 aggrieved by any act, determination, rule, order, or any other action
24 of the commissioner pursuant to this chapter must proceed in accordance
25 with the administrative procedure act, chapter 34.05 RCW.

26 (2) The filing of an appeal pursuant to this section does not stay
27 the application of any rule, order, or other action of the commissioner
28 to the appealing party except as provided in the administrative
29 procedure act, chapter 34.05 RCW.

30 (3) Any person aggrieved by any failure of the commissioner to act
31 or make a determination required by this chapter may petition the
32 commissioner under the procedure described in the administrative
33 procedure act, chapter 34.05 RCW.

34 NEW SECTION. **Sec. 16.** RULES. The commissioner may, in accordance

1 with the administrative procedure act, chapter 34.05 RCW, adopt rules
2 interpreting and implementing the provisions of this chapter.

3 **Sec. 17.** RCW 42.56.400 and 2013 c 277 s 5 and 2013 c 65 s 5 are
4 each reenacted and amended to read as follows:

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

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

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

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

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

21 (5) Information provided under RCW 48.05.510 through 48.05.535,
22 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
23 through 48.46.625;

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

31 (7) Information provided to the insurance commissioner under RCW
32 48.110.040(3);

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

36 (9) ~~((Confidential proprietary and trade secret information
37 provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~

1 ~~and 48.31C.070~~) Documents, materials, or information obtained by the
2 insurance commissioner under sections 5(12) and 8 of this act, all of
3 which are confidential and privileged;

4 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
5 7.70.140 that, alone or in combination with any other data, may reveal
6 the identity of a claimant, health care provider, health care facility,
7 insuring entity, or self-insurer involved in a particular claim or a
8 collection of claims. For the purposes of this subsection:

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

10 (b) "Health care facility" has the same meaning as in RCW
11 48.140.010(6).

12 (c) "Health care provider" has the same meaning as in RCW
13 48.140.010(7).

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

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

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

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

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

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

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

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

28 (17) Documents, materials, or information obtained by the insurance
29 commissioner in the commissioner's capacity as receiver under RCW
30 48.31.025 and 48.99.017, which are records under the jurisdiction and
31 control of the receivership court. The commissioner is not required to
32 search for, log, produce, or otherwise comply with the public records
33 act for any records that the commissioner obtains under chapters 48.31
34 and 48.99 RCW in the commissioner's capacity as a receiver, except as
35 directed by the receivership court;

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

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

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

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

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

11 (23) Information not subject to public inspection or public
12 disclosure under RCW 48.43.730(5).

13 **Sec. 18.** RCW 42.56.400 and 2013 c 65 s 5 are each amended to read
14 as follows:

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

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

20 (2) Information obtained and exempted or withheld from public
21 inspection by the health care authority under RCW 41.05.026, whether
22 retained by the authority, transferred to another state purchased
23 health care program by the authority, or transferred by the authority
24 to a technical review committee created to facilitate the development,
25 acquisition, or implementation of state purchased health care under
26 chapter 41.05 RCW;

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

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

31 (5) Information provided under RCW 48.05.510 through 48.05.535,
32 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
33 through 48.46.625;

34 (6) Examination reports and information obtained by the department
35 of financial institutions from banks under RCW 30.04.075, from savings
36 banks under RCW 32.04.220, from savings and loan associations under RCW
37 33.04.110, from credit unions under RCW 31.12.565, from check cashers

1 and sellers under RCW 31.45.030(3), and from securities brokers and
2 investment advisers under RCW 21.20.100, all of which is confidential
3 and privileged information;

4 (7) Information provided to the insurance commissioner under RCW
5 48.110.040(3);

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

9 (~~Confidential proprietary and trade secret information~~
10 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~
11 ~~and 48.31C.070~~) Documents, materials, or information obtained by the
12 insurance commissioner under sections 5(12) and 8 of this act, all of
13 which are confidential and privileged;

14 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
15 7.70.140 that, alone or in combination with any other data, may reveal
16 the identity of a claimant, health care provider, health care facility,
17 insuring entity, or self-insurer involved in a particular claim or a
18 collection of claims. For the purposes of this subsection:

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

20 (b) "Health care facility" has the same meaning as in RCW
21 48.140.010(6).

22 (c) "Health care provider" has the same meaning as in RCW
23 48.140.010(7).

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

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

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

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

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

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

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

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

1 (17) Documents, materials, or information obtained by the insurance
2 commissioner in the commissioner's capacity as receiver under RCW
3 48.31.025 and 48.99.017, which are records under the jurisdiction and
4 control of the receivership court. The commissioner is not required to
5 search for, log, produce, or otherwise comply with the public records
6 act for any records that the commissioner obtains under chapters 48.31
7 and 48.99 RCW in the commissioner's capacity as a receiver, except as
8 directed by the receivership court;

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

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

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

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

19 (22) Data, information, and documents obtained by the insurance
20 commissioner under RCW 48.29.017.

21 **Sec. 19.** RCW 48.02.065 and 2007 c 126 s 1 are each amended to read
22 as follows:

23 (1) Documents, materials, or other information as described in
24 either subsection (5) or (6), or both, of this section are confidential
25 by law and privileged, are not subject to public disclosure under
26 chapter 42.56 RCW, and are not subject to subpoena directed to the
27 commissioner or any person who received documents, materials, or other
28 information while acting under the authority of the commissioner. The
29 commissioner is authorized to use such documents, materials, or other
30 information in the furtherance of any regulatory or legal action
31 brought as a part of the commissioner's official duties. The
32 confidentiality and privilege created by this section and RCW
33 42.56.400(~~(+9)~~) (8) applies only to the commissioner, any person
34 acting under the authority of the commissioner, the national
35 association of insurance commissioners and its affiliates and
36 subsidiaries, regulatory and law enforcement officials of other states
37 and nations, the federal government, and international authorities.

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

6 (3) The commissioner:

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

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

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

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

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

1 information is protected from disclosure by the applicable laws of the
2 jurisdiction that is the source of the document, material, or
3 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 may
13 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 commissioner
17 under this section does not create any privilege or claim of
18 confidentiality or waive any existing privilege or claim of
19 confidentiality.

20 (7)(a) After receipt of a public disclosure request, the
21 commissioner shall disclose the documents, materials, or information
22 under subsection (6) of this section that relate to a financial or
23 market conduct examination undertaken as a result of a proposed change
24 of control of a nonprofit or mutual health insurer governed in whole or
25 in part by chapter 48.31B (~~or 48.31C~~) RCW.

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

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

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

33 (8) Any person may petition a Washington state superior court to
34 allow inspection of information exempt from public disclosure under
35 subsection (6) of this section when the information is connected to
36 allegations of negligence or malfeasance by the commissioner related to
37 a financial or market conduct examination. The court shall conduct an
38 in-camera review after notifying the commissioner and every party that

1 produced the information. The court may order the commissioner to
2 allow the petitioner to have access to the information provided the
3 petitioner maintains the confidentiality of the information. The
4 petitioner must not disclose the information to any other person,
5 except upon further order of the court. After conducting a regular
6 hearing, the court may order that the information can be disclosed
7 publicly if the court finds that there is a public interest in the
8 disclosure of the information and the exemption of the information from
9 public disclosure is clearly unnecessary to protect any individual's
10 right of privacy or any vital governmental function.

11 **Sec. 20.** RCW 48.13.061 and 2011 c 188 s 7 are each amended to read
12 as follows:

13 The following classes of investments may be counted for the
14 purposes specified in RCW 48.13.101, whether they are made directly or
15 as a participant in a partnership, joint venture, or limited liability
16 company. Investments in partnerships, joint ventures, and limited
17 liability companies are authorized investments only pursuant to
18 subsection (12) of this section:

19 (1) Cash in the direct possession of the insurer or on deposit with
20 a financial institution regulated by any federal or state agency of the
21 United States;

22 (2) Bonds, debt-like preferred stock, and other evidences of
23 indebtedness of governmental units in the United States or Canada, or
24 the instrumentalities of the governmental units, or private business
25 entities domiciled in the United States or Canada, including asset-
26 backed securities and securities valuation office listed mutual funds;

27 (3) Loans secured by first mortgages, first trust deeds, or other
28 first security interests in real property located in the United States
29 or Canada or secured by insurance against default issued by a
30 government insurance corporation of the United States or Canada or by
31 an insurer authorized to do business in this state;

32 (4) Common stock or equity-like preferred stock or equity interests
33 in any United States or Canadian business entity, or shares of mutual
34 funds registered with the securities and exchange commission of the
35 United States under the investment company act of 1940, other than
36 securities valuation office listed mutual funds, and, subsidiaries, as

1 defined in ((~~RCW 48.31B.005 or 48.31C.010~~)) section 1(9) of this act,
2 engaged exclusively in the following businesses:

3 (a) Acting as an insurance producer, surplus line broker, or title
4 insurance agent for its parent or for any of its parent's insurer
5 subsidiaries or affiliates;

6 (b) Investing, reinvesting, or trading in securities or acting as
7 a securities broker or dealer for its own account, that of its parent,
8 any subsidiary of its parent, or any affiliate or subsidiary;

9 (c) Rendering management, sales, or other related services to any
10 investment company subject to the federal investment company act of
11 1940, as amended;

12 (d) Rendering investment advice;

13 (e) Rendering services related to the functions involved in the
14 operation of an insurance business including, but not limited to,
15 actuarial, loss prevention, safety engineering, data processing,
16 accounting, claims appraisal, and collection services;

17 (f) Acting as administrator of employee welfare benefit and pension
18 plans for governments, government agencies, corporations, or other
19 organizations or groups;

20 (g) Ownership and management of assets which the parent could
21 itself own and manage: PROVIDED, that the aggregate investment by the
22 insurer and its subsidiaries acquired pursuant to this subsection
23 (4)(g) shall not exceed the limitations otherwise applicable to such
24 investments by the parent;

25 (h) Acting as administrative agent for a government instrumentality
26 which is performing an insurance function or is responsible for a
27 health or welfare program;

28 (i) Financing of insurance premiums;

29 (j) Any other business activity reasonably ancillary to an
30 insurance business;

31 (k) Owning one or more subsidiary;

32 (i) Insurers, health care service contractors, or health
33 maintenance organizations to the extent permitted by this chapter;

34 (ii) Businesses specified in (a) through (k) of this subsection
35 inclusive; or

36 (iii) Any combination of such insurers and businesses;

37 (5) Real property necessary for the convenient transaction of the
38 insurer's business;

1 (6) Real property, together with the fixtures, furniture,
2 furnishings, and equipment pertaining thereto in the United States or
3 Canada, which produces or after suitable improvement can reasonably be
4 expected to produce income;

5 (7) Loans, securities, or other investments of the types described
6 in subsections (1) through (6) of this section in national association
7 of insurance commissioners securities valuation office 1 debt rated
8 countries other than the United States and Canada;

9 (8) Bonds or other evidences of indebtedness of international
10 development organizations of which the United States is a member;

11 (9) Loans upon the security of the insurer's own policies in
12 amounts that are adequately secured by the policies and that in no case
13 exceed the surrender values of the policies;

14 (10) Tangible personal property under contract of sale or lease
15 under which contractual payments may reasonably be expected to return
16 the principal of and provide earnings on the investment within its
17 anticipated useful life;

18 (11) Other investments the commissioner authorizes by rule; and

19 (12) Investments not otherwise permitted by this section, and not
20 specifically prohibited by statute, to the extent of not more than five
21 percent of the first five hundred million dollars of the insurer's
22 admitted assets plus ten percent of the insurer's admitted assets
23 exceeding five hundred million dollars.

24 **Sec. 21.** RCW 48.18.545 and 2002 c 360 s 1 are each amended to read
25 as follows:

26 (1) For the purposes of this section:

27 (a) "Adverse action" has the same meaning as defined in the fair
28 credit reporting act, 15 U.S.C. Sec. 1681 et seq. Adverse actions
29 include, but are not limited to:

30 (i) Cancellation, denial, or nonrenewal of personal insurance
31 coverage;

32 (ii) Charging a higher insurance premium for personal insurance
33 than would have been offered if the credit history or insurance score
34 had been more favorable, whether the charge is by:

35 (A) Application of a rating rule;

36 (B) Assignment to a rating tier that does not have the lowest
37 available rates; or

1 (C) Placement with an affiliate company that does not offer the
2 lowest rates available to the consumer within the affiliate group of
3 insurance companies; or

4 (iii) Any reduction, adverse, or unfavorable change in the terms of
5 coverage or amount of any personal insurance due to a consumer's credit
6 history or insurance score. A reduction, adverse, or unfavorable
7 change in the terms of coverage occurs when:

8 (A) Coverage provided to the consumer is not as broad in scope as
9 coverage requested by the consumer but available to other insureds of
10 the insurer or any affiliate; or

11 (B) The consumer is not eligible for benefits such as dividends
12 that are available through affiliate insurers.

13 (b) "Affiliate" has the same meaning as defined in ((RCW
14 ~~48.31B.005(1)~~) section 1 of this act.

15 (c) "Consumer" means an individual policyholder or applicant for
16 insurance.

17 (d) "Consumer report" has the same meaning as defined in the fair
18 credit reporting act, 15 U.S.C. Sec. 1681 et seq.

19 (e) "Credit history" means any written, oral, or other
20 communication of any information by a consumer reporting agency bearing
21 on a consumer's creditworthiness, credit standing, or credit capacity
22 that is used or expected to be used, or collected in whole or in part,
23 for the purpose of serving as a factor in determining personal
24 insurance premiums or eligibility for coverage.

25 (f) "Insurance score" means a number or rating that is derived from
26 an algorithm, computer application, model, or other process that is
27 based in whole or in part on credit history.

28 (g) "Personal insurance" means:

29 (i) Private passenger automobile coverage;

30 (ii) Homeowner's coverage, including mobile homeowners,
31 manufactured homeowners, condominium owners, and renter's coverage;

32 (iii) Dwelling property coverage;

33 (iv) Earthquake coverage for a residence or personal property;

34 (v) Personal liability and theft coverage;

35 (vi) Personal inland marine coverage; and

36 (vii) Mechanical breakdown coverage for personal auto or home
37 appliances.

1 (h) "Tier" means a category within a single insurer into which
2 insureds with substantially like insuring, risk or exposure factors,
3 and expense elements are placed for purposes of determining rate or
4 premium.

5 (2) An insurer that takes adverse action against a consumer based
6 in whole or in part on credit history or insurance score shall provide
7 written notice to the applicant or named insured. The notice must
8 state the significant factors of the credit history or insurance score
9 that resulted in the adverse action. The insurer shall also inform the
10 consumer that the consumer is entitled to a free copy of their consumer
11 report under the fair credit reporting act.

12 (3) An insurer shall not cancel or nonrenew personal insurance
13 based in whole or in part on a consumer's credit history or insurance
14 score. An offer of placement with an affiliate insurer does not
15 constitute cancellation or nonrenewal under this section.

16 (4) An insurer may use credit history to deny personal insurance
17 only in combination with other substantive underwriting factors. For
18 the purposes of this subsection:

19 (a) "Deny" means an insurer refuses to offer insurance coverage to
20 a consumer;

21 (b) An offer of placement with an affiliate insurer does not
22 constitute denial of coverage; and

23 (c) An insurer may reject an application when coverage is not bound
24 or cancel an insurance contract within the first sixty days after the
25 effective date of the contract.

26 (5) Insurers shall not deny personal insurance coverage based on:

27 (a) The absence of credit history or the inability to determine the
28 consumer's credit history, if the insurer has received accurate and
29 complete information from the consumer;

30 (b) The number of credit inquiries;

31 (c) Credit history or an insurance score based on collection
32 accounts identified with a medical industry code;

33 (d) The initial purchase or finance of a vehicle or house that adds
34 a new loan to the consumer's existing credit history, if evident from
35 the consumer report; however, an insurer may consider the bill payment
36 history of any loan, the total number of loans, or both;

37 (e) The consumer's use of a particular type of credit card, charge
38 card, or debit card; or

1 (f) The consumer's total available line of credit; however, an
2 insurer may consider the total amount of outstanding debt in relation
3 to the total available line of credit.

4 (6)(a) If disputed credit history is used to determine eligibility
5 for coverage and a consumer is placed with an affiliate that charges
6 higher premiums or offers less favorable policy terms:

7 (i) The insurer shall reissue or rerate the policy retroactive to
8 the effective date of the current policy term; and

9 (ii) The policy, as reissued or rerated, shall provide premiums and
10 policy terms the consumer would have been eligible for if accurate
11 credit history had been used to determine eligibility.

12 (b) This subsection only applies if the consumer resolves the
13 dispute under the process set forth in the fair credit reporting act
14 and notifies the insurer in writing that the dispute has been resolved.

15 (7) The commissioner may adopt rules to implement this section.

16 (8) This section applies to all personal insurance policies issued
17 or renewed after January 1, 2003.

18 **Sec. 22.** RCW 48.18.547 and 2006 c 8 s 211 are each amended to read
19 as follows:

20 (1) For the purposes of this section:

21 (a) "Affiliate" has the same meaning as in ((RCW 48.31B.005(1)))
22 section 1 of this act.

23 (b) "Claim" means a demand for monetary damages by a claimant.

24 (c) "Claimant" means a person, including a decedent's estate, who
25 is seeking or has sought monetary damages for injury or death caused by
26 medical malpractice.

27 (d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).

28 (e) "Underwrite" or "underwriting" means the process of selecting,
29 rejecting, or pricing a risk, and includes each of these activities:

30 (i) Evaluation, selection, and classification of risk, including
31 placing a risk with an affiliate insurer that has higher rates and/or
32 rating plan components that will result in higher premiums;

33 (ii) Application of classification plans, rates, rating rules, and
34 rating tiers to an insured risk; and

35 (iii) Determining eligibility for:

36 (A) Insurance coverage provisions;

37 (B) Higher policy limits; or

1 (C) Premium payment plans.

2 (2) During each underwriting process, an insurer may consider the
3 following factors only in combination with other substantive
4 underwriting factors:

5 (a) An insured has inquired about the nature or scope of coverage
6 under a medical malpractice insurance policy;

7 (b) An insured has notified their insurer about an incident that
8 may be covered under the terms of their medical malpractice insurance
9 policy, and that incident does not result in a claim; or

10 (c) A claim made against an insured was closed by the insurer
11 without payment. An insurer may consider the effect of multiple claims
12 if they have a significant effect on the insured's risk profile.

13 (3) If any underwriting activity related to the insured's risk
14 profile results in higher premiums as described under subsection
15 (1)(e)(i) and (ii) of this section or reduced coverage as described
16 under subsection (1)(e)(iii) of this section, the insurer must provide
17 written notice to the insured, in clear and simple language, that
18 describes the significant risk factors which led to the underwriting
19 action. The commissioner must adopt rules that define the components
20 of a risk profile that require notice under this subsection.

21 **Sec. 23.** RCW 48.19.035 and 2004 c 86 s 1 are each amended to read
22 as follows:

23 (1) For the purposes of this section:

24 (a) "Affiliate" has the same meaning as defined in ((RCW
25 ~~48.31B.005(1)~~) section 1 of this act.

26 (b) "Consumer" means an individual policyholder or applicant for
27 insurance.

28 (c) "Credit history" means any written, oral, or other
29 communication of any information by a consumer reporting agency bearing
30 on a consumer's creditworthiness, credit standing, or credit capacity
31 that is used or expected to be used, or collected in whole or in part,
32 for the purpose of serving as a factor in determining personal
33 insurance premiums or eligibility for coverage.

34 (d) "Insurance score" means a number or rating that is derived from
35 an algorithm, computer application, model, or other process that is
36 based in whole or in part on credit history.

37 (e) "Personal insurance" means:

1 (i) Private passenger automobile coverage;
2 (ii) Homeowner's coverage, including mobile homeowners,
3 manufactured homeowners, condominium owners, and renter's coverage;
4 (iii) Dwelling property coverage;
5 (iv) Earthquake coverage for a residence or personal property;
6 (v) Personal liability and theft coverage;
7 (vi) Personal inland marine coverage; and
8 (vii) Mechanical breakdown coverage for personal auto or home
9 appliances.

10 (2)(a) Credit history shall not be used to determine personal
11 insurance rates, premiums, or eligibility for coverage unless the
12 insurance scoring models are filed with the commissioner. Insurance
13 scoring models include all attributes and factors used in the
14 calculation of an insurance score. RCW 48.19.040(5) does not apply to
15 any information filed under this subsection, and the information shall
16 be withheld from public inspection and kept confidential by the
17 commissioner. All information filed under this subsection shall be
18 considered trade secrets under RCW 48.02.120(3). Information filed
19 under this subsection may be made public by the commissioner for the
20 sole purpose of enforcement actions taken by the commissioner.

21 (b) Each insurer that uses credit history or an insurance score to
22 determine personal insurance rates, premiums, or eligibility for
23 coverage must file all rates and rating plans for that line of coverage
24 with the commissioner. This requirement applies equally to a single
25 insurer and two or more affiliated insurers. RCW 48.19.040(5) applies
26 to information filed under this subsection except that any eligibility
27 rules or guidelines shall be withheld from public inspection under RCW
28 48.02.120(3) from the date that the information is filed and after it
29 becomes effective.

30 (3) Insurers shall not use the following types of credit history to
31 calculate a personal insurance score or determine personal insurance
32 premiums or rates:

33 (a) The absence of credit history or the inability to determine the
34 consumer's credit history, unless the insurer has filed actuarial data
35 segmented by demographic factors in a manner prescribed by the
36 commissioner that demonstrates compliance with RCW 48.19.020;

37 (b) The number of credit inquiries;

1 (c) Credit history or an insurance score based on collection
2 accounts identified with a medical industry code;

3 (d) The initial purchase or finance of a vehicle or house that adds
4 a new loan to the consumer's existing credit history, if evident from
5 the consumer report; however, an insurer may consider the bill payment
6 history of any loan, the total number of loans, or both;

7 (e) The consumer's use of a particular type of credit card, charge
8 card, or debit card; or

9 (f) The consumer's total available line of credit; however, an
10 insurer may consider the total amount of outstanding debt in relation
11 to the total available line of credit.

12 (4) If a consumer is charged higher premiums due to disputed credit
13 history, the insurer shall rerate the policy retroactive to the
14 effective date of the current policy term. As rerated, the consumer
15 shall be charged the same premiums they would have been charged if
16 accurate credit history was used to calculate an insurance score. This
17 subsection applies only if the consumer resolves the dispute under the
18 process set forth in the fair credit reporting act and notifies the
19 insurer in writing that the dispute has been resolved.

20 (5) The commissioner may adopt rules to implement this section.

21 (6) This section applies to all personal insurance policies issued
22 or renewed on or after June 30, 2003.

23 **Sec. 24.** RCW 48.38.010 and 2012 c 211 s 5 are each amended to read
24 as follows:

25 The commissioner may grant a certificate of exemption to any
26 insurer or educational, religious, charitable, or scientific
27 institution conducting a charitable gift annuity business:

28 (1) Which is organized and operated exclusively as, or for the
29 purpose of aiding, an educational, religious, charitable, or scientific
30 institution which is organized as a nonprofit organization without
31 profit to any person, firm, partnership, association, corporation, or
32 other entity;

33 (2) Which possesses a current tax exempt status under the laws of
34 the United States;

35 (3) Which serves such purpose by issuing charitable gift annuity
36 contracts only for the benefit of such educational, religious,
37 charitable, or scientific institution;

1 (4) Which appoints the insurance commissioner as its true and
2 lawful attorney upon whom may be served lawful process in any action,
3 suit, or proceeding in any court, which appointment is irrevocable,
4 binds the insurer or institution or any successor in interest, remains
5 in effect as long as there is in force in this state any contract made
6 or issued by the insurer or institution, or any obligation arising
7 therefrom, and must be processed in accordance with RCW 48.05.200;

8 (5) Which is fully and legally organized and qualified to do
9 business and has been actively doing business under the laws of the
10 state of its domicile for a period of at least three years prior to its
11 application for a certificate of exemption;

12 (6) Which has and maintains minimum unrestricted net assets of five
13 hundred thousand dollars. "Unrestricted net assets" means the excess
14 of total assets over total liabilities that are neither permanently
15 restricted nor temporarily restricted by donor-imposed stipulations;

16 (7) Which files with the insurance commissioner its application for
17 a certificate of exemption showing:

18 (a) Its name, location, and organization date;

19 (b) The kinds of charitable annuities it proposes to offer;

20 (c) A statement of the financial condition, management, and affairs
21 of the organization and any affiliate thereof, as that term is defined
22 in (~~RCW 48.31B.005~~) section 1 of this act, on a form satisfactory to,
23 or furnished by the insurance commissioner;

24 (d) Other documents, stipulations, or information as the insurance
25 commissioner may reasonably require to evidence compliance with the
26 provisions of this chapter;

27 (8) Which subjects itself and any affiliate thereof, as that term
28 is defined in (~~RCW 48.31B.005~~) section 1 of this act, to periodic
29 examinations conducted under chapter 48.03 RCW as may be deemed
30 necessary by the insurance commissioner;

31 (9) Which files with the insurance commissioner for the
32 commissioner's advance approval a copy of any policy or contract form
33 to be offered or issued to residents of this state. The grounds for
34 disapproval of the policy or contract form are set forth in RCW
35 48.18.110; and

36 (10) Which:

37 (a) Files with the insurance commissioner annually, within sixty
38 days of the end of its fiscal year a report of its current financial

1 condition, management, and affairs, on a form and in a manner
2 prescribed by the commissioner, as well as such other financial
3 material as may be requested, including the annual statement or other
4 such financial materials as may be requested relating to any affiliate,
5 as that term is defined in (~~RCW 48.31B.005~~) section 1 of this act;

6 (b) Attaches to the report of its current financial condition the
7 statement of a qualified actuary setting forth the actuary's opinion
8 relating to annuity reserves and other actuarial items for the fiscal
9 year covered by the report. "Qualified actuary" as used in this
10 subsection means a member in good standing of the American academy of
11 actuaries or a person who has otherwise demonstrated actuarial
12 competence to the satisfaction of the insurance regulatory official of
13 the domiciliary state; and

14 (c) On or before March 1st of each year, pays an annual filing fee
15 of twenty-five dollars plus five dollars for each charitable gift
16 annuity contract written for residents of this state during its fiscal
17 year ending on or before December 31st of the previous calendar year.

18 **Sec. 25.** RCW 48.97.005 and 2008 c 217 s 75 are each amended to
19 read as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Accredited state" means a state in which the insurance
23 department or regulatory agency has qualified as meeting the minimum
24 financial regulatory standards promulgated and established from time to
25 time by the National Association of Insurance Commissioners.

26 (2) "Control" or "controlled by" has the meaning (~~ascribed in RCW~~
27 ~~48.31B.005(2)~~) as in section 1 of this act.

28 (3) "Controlled insurer" means a licensed insurer that is
29 controlled, directly or indirectly, by a broker.

30 (4) "Controlling producer" means a producer who, directly or
31 indirectly, controls an insurer.

32 (5) "Licensed insurer" or "insurer" means a person, firm,
33 association, or corporation licensed to transact property and casualty
34 insurance business in this state. The following, among others, are not
35 licensed insurers for purposes of this chapter:

36 (a) (~~Risk retention groups as defined in the Superfund Amendments~~

1 ~~Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the~~
2 ~~Risk Retention Act, 15 U.S.C. Sec. 3901 et seq. (1982 Supp. 1986), and~~
3 ~~chapter 48.92 RCW;~~

4 ~~(b))~~ All residual market pools and joint underwriting
5 associations; and

6 ~~((c) Captive insurers.))~~ (b) For the purposes of this chapter,
7 captive insurers other than risk retention groups as defined in 15
8 U.S.C. Sec. 3901 et seq. and 42 U.S.C. Sec. 9671 are insurance
9 companies owned by another organization((r)) whose exclusive purpose is
10 to insure risks of the parent organization and affiliated companies or,
11 in the case of groups and associations, insurance organizations owned
12 by the insureds whose exclusive purpose is to insure risks to member
13 organizations or group members, or both, and their affiliates.

14 (6) "Producer" means an insurance broker or brokers or any other
15 person, firm, association, or corporation when, for compensation,
16 commission, or other thing of value, the person, firm, association, or
17 corporation acts or aids in any manner in soliciting, negotiating, or
18 procuring the making of an insurance contract on behalf of an insured
19 other than the person, firm, association, or corporation.

20 **Sec. 26.** RCW 48.125.140 and 2004 c 260 s 16 are each amended to
21 read as follows:

22 (1) The commissioner may make an examination of the operations of
23 any self-funded multiple employer welfare arrangement as often as he or
24 she deems necessary in order to carry out the purposes of this chapter.

25 (2) Every self-funded multiple employer welfare arrangement shall
26 submit its books and records relating to its operation for financial
27 condition and market conduct examinations and in every way facilitate
28 them. For the purpose of examinations, the commissioner may issue
29 subpoenas, administer oaths, and examine the officers and principals of
30 the ~~(self-funded))~~ self-funded multiple employer welfare
31 arrangement.

32 (3) The commissioner may elect to accept and rely on audit reports
33 made by an independent certified public accountant for the self-funded
34 multiple employer welfare arrangement in the course of that part of the
35 commissioner's examination covering the same general subject matter as
36 the audit. The commissioner may incorporate the audit report in his or
37 her report of the examination.

1 (4)(a) The commissioner may also examine any affiliate of the self-
2 funded multiple employer welfare arrangement. An examination of an
3 affiliate is limited to the activities or operations of the affiliate
4 that may impact the financial position of the arrangement.

5 (b) For the purposes of this section, "affiliate" has the same
6 meaning as defined in (~~RCW 48.31C.010~~) section 1 of this act.

7 (5) Whenever an examination is made, all of the provisions of
8 chapter 48.03 RCW not inconsistent with this chapter shall be
9 applicable. In lieu of making an examination himself or herself, the
10 commissioner may, in the case of a foreign self-funded multiple
11 employer welfare arrangement, accept an examination report of the
12 applicant by the regulatory official in its state of domicile. In the
13 case of a domestic self-funded multiple employer welfare arrangement,
14 the commissioner may accept an examination report of the applicant by
15 the regulatory official of a state that has already licensed the
16 arrangement.

17 **Sec. 27.** RCW 48.155.010 and 2010 c 27 s 4 are each amended to read
18 as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

21 (1) "Affiliate" means a person that directly, or indirectly through
22 one or more intermediaries, controls, or is controlled by, or is under
23 common control with, the person specified.

24 (2) "Commissioner" means the Washington state insurance
25 commissioner.

26 (3)(a) "Control" or "controlled by" or "under common control with"
27 means the possession, direct or indirect, of the power to direct or
28 cause the direction of the management and policies of a person, whether
29 through the ownership of voting securities, by contract other than a
30 commercial contract for goods or nonmanagement services, or otherwise,
31 unless the power is the result of an official position with or
32 corporate office held by the person.

33 (b) Control exists when any person, directly or indirectly, owns,
34 controls, holds with the power to vote, or holds proxies representing
35 ten percent or more of the voting securities of any other person. A
36 presumption of control may be rebutted by a showing made in the manner
37 provided by (~~RCW 48.31B.005(2) and 48.31B.025(11)~~) section 1(2) and

1 5(11) of this act that control does not exist in fact. The
2 commissioner may determine, after furnishing all persons in interest
3 notice and opportunity to be heard and making specific findings of fact
4 to support the determination, that control exists in fact,
5 notwithstanding the absence of a presumption to that effect.

6 (4)(a) "Discount plan" means a business arrangement or contract in
7 which a person or organization, in exchange for fees, dues, charges, or
8 other consideration, provides or purports to provide discounts to its
9 members on charges by providers for health care services.

10 (b) "Discount plan" does not include:

11 (i) A plan that does not charge a membership or other fee to use
12 the plan's discount card;

13 (ii) A patient access program as defined in this chapter;

14 (iii) A medicare prescription drug plan as defined in this chapter;
15 or

16 (iv) A discount plan offered by a health carrier authorized under
17 chapter 48.20, 48.21, 48.44, or 48.46 RCW.

18 (5)(a) "Discount plan organization" means a person that, in
19 exchange for fees, dues, charges, or other consideration, provides or
20 purports to provide access to discounts to its members on charges by
21 providers for health care services. "Discount plan organization" also
22 means a person or organization that contracts with providers, provider
23 networks, or other discount plan organizations to offer discounts on
24 health care services to its members. This term also includes all
25 persons that determine the charge to or other consideration paid by
26 members.

27 (b) "Discount plan organization" does not mean:

28 (i) Pharmacy benefit managers;

29 (ii) Health care provider networks, when the network's only
30 involvement in discount plans is contracting with the plan to provide
31 discounts to the plan's members;

32 (iii) Marketers who market the discount plans of discount plan
33 organizations which are licensed under this chapter as long as all
34 written communications of the marketer in connection with a discount
35 plan clearly identify the licensed discount plan organization as the
36 responsible entity; or

37 (iv) Health carriers, if the discount on health care services is

1 offered by a health carrier authorized under chapter 48.20, 48.21,
2 48.44, or 48.46 RCW.

3 (6) "Health care facility" or "facility" has the same meaning as in
4 RCW 48.43.005(~~(+15)~~) (22).

5 (7) "Health care provider" or "provider" has the same meaning as in
6 RCW 48.43.005(~~(+16)~~) (23).

7 (8) "Health care provider network," "provider network," or
8 "network" means any network of health care providers, including any
9 person or entity that negotiates directly or indirectly with a discount
10 plan organization on behalf of more than one provider to provide health
11 care services to members.

12 (9) "Health care services" has the same meaning as in RCW
13 48.43.005(~~(+17)~~) (24).

14 (10) "Health carrier" or "carrier" has the same meaning as in RCW
15 48.43.005(~~(+18)~~) (25).

16 (11) "Marketer" means a person or entity that markets, promotes,
17 sells, or distributes a discount plan, including a contracted marketing
18 organization and a private label entity that places its name on and
19 markets or distributes a discount plan pursuant to a marketing
20 agreement with a discount plan organization.

21 (12) "Medicare prescription drug plan" means a plan that provides
22 a medicare part D prescription drug benefit in accordance with the
23 requirements of the federal medicare prescription drug improvement and
24 modernization act of 2003.

25 (13) "Member" means any individual who pays fees, dues, charges, or
26 other consideration for the right to receive the benefits of a discount
27 plan, but does not include any individual who enrolls in a patient
28 access program.

29 (14) "Patient access program" means a voluntary program sponsored
30 by a pharmaceutical manufacturer, or a consortium of pharmaceutical
31 manufacturers, that provides free or discounted health care products
32 for no additional consideration directly to low-income or uninsured
33 individuals either through a discount card or direct shipment.

34 (15) "Person" means an individual, a corporation, a governmental
35 entity, a partnership, an association, a joint venture, a joint stock
36 company, a trust, an unincorporated organization, any similar entity,
37 or any combination of the persons listed in this subsection.

1 (16)(a) "Pharmacy benefit manager" means a person that performs
2 pharmacy benefit management for a covered entity.

3 (b) For purposes of this subsection, a "covered entity" means an
4 insurer, a health care service contractor, a health maintenance
5 organization, or a multiple employer welfare arrangement licensed,
6 certified, or registered under the provisions of this title. "Covered
7 entity" also means a health program administered by the state as a
8 provider of health coverage, a single employer that provides health
9 coverage to its employees, or a labor union that provides health
10 coverage to its members as part of a collective bargaining agreement.

11 **Sec. 28.** RCW 48.155.015 and 2009 c 175 s 4 are each amended to
12 read as follows:

13 (1) This chapter applies to all discount plans and all discount
14 plan organizations doing business in or from this state or that affect
15 subjects located wholly or in part or to be performed within this
16 state, and all persons having to do with this business.

17 (2) A discount plan organization that is a health carrier, as
18 defined under RCW 48.43.005, with a license, certificate of authority,
19 or registration (~~(under RCW 48.05.030 or chapter 48.31C RCW)~~):

20 (a) Is not required to obtain a license under RCW 48.155.020,
21 except that any of its affiliates that operate as a discount plan
22 organization in this state must obtain a license under RCW 48.155.020
23 and comply with all other provisions of this chapter;

24 (b) Is required to comply with RCW 48.155.060 through 48.155.090
25 and report, in the form and manner as the commissioner may require, any
26 of the information described in RCW 48.155.110(2) (b), (c), or (d) that
27 is not otherwise already reported; and

28 (c) Is subject to RCW 48.155.130 and 48.155.140.

29 NEW SECTION. **Sec. 29.** The following acts or parts of acts are
30 each repealed:

31 (1) RCW 48.31B.005 (Definitions) and 1993 c 462 s 2;

32 (2) RCW 48.31B.010 (Insurer ceases to control subsidiary--Disposal
33 of investment) and 1993 c 462 s 3;

34 (3) RCW 48.31B.015 (Control of insurer--Acquisition, merger, or
35 exchange--Preacquisition notification--Jurisdiction of courts) and 1993
36 c 462 s 4;

1 (4) RCW 48.31B.020 (Acquisition of insurer--Change in control--
2 Definitions--Exemptions--Competition--Preacquisition notification--
3 Violations--Penalties) and 1993 c 462 s 5;

4 (5) RCW 48.31B.025 (Registration with commissioner--Information
5 required--Rule making--Disclaimer of affiliation--Failure to file) and
6 2000 c 214 s 1 & 1993 c 462 s 6;

7 (6) RCW 48.31B.030 (Insurer subject to registration--Standards for
8 transactions within a holding company system--Extraordinary dividends
9 or distributions--Insurer's surplus) and 1993 c 462 s 7;

10 (7) RCW 48.31B.035 (Examination of insurers--Commissioner may order
11 production of information--Failure to comply--Costs of examination) and
12 1993 c 462 s 8;

13 (8) RCW 48.31B.040 (Rule making) and 1993 c 462 s 9;

14 (9) RCW 48.31B.045 (Violations of chapter--Commissioner may seek
15 superior court order) and 1993 c 462 s 10;

16 (10) RCW 48.31B.050 (Violations of chapter--Penalties--Civil
17 forfeitures--Orders--Referral to prosecuting attorney--Imprisonment)
18 and 1993 c 462 s 11;

19 (11) RCW 48.31B.055 (Violations of chapter--Impairment of financial
20 condition--Commissioner may take possession) and 1993 c 462 s 12;

21 (12) RCW 48.31B.060 (Order for liquidation or rehabilitation--
22 Recovery of distributions or payments--Personal liability--Maximum
23 amount recoverable) and 1993 c 462 s 13;

24 (13) RCW 48.31B.065 (Violations of chapter--Contrary to interests
25 of policyholders or the public--Suspension, revocation, or nonrenewal
26 of license) and 1993 c 462 s 14;

27 (14) RCW 48.31B.070 (Person aggrieved by actions of commissioner)
28 and 1993 c 462 s 15;

29 (15) RCW 48.31B.900 (Short title) and 1993 c 462 s 1;

30 (16) RCW 48.31B.901 (Severability--1993 c 462) and 1993 c 462 s
31 112;

32 (17) RCW 48.31B.902 (Implementation--1993 c 462) and 1993 c 462 s
33 106;

34 (18) RCW 48.31C.010 (Definitions) and 2001 c 179 s 1;

35 (19) RCW 48.31C.020 (Acquisition of a foreign health carrier--
36 Preacquisition notification--Review) and 2001 c 179 s 2;

37 (20) RCW 48.31C.030 (Acquisition of a domestic health carrier--
38 Filing--Review--Jurisdiction of courts) and 2001 c 179 s 3;

1 (21) RCW 48.31C.040 (Registration with commissioner--Information
2 required--Rule making--Disclaimer of affiliation--Failure to file) and
3 2001 c 179 s 4;

4 (22) RCW 48.31C.050 (Health carrier subject to registration--
5 Standards for transactions within a holding company system--Notice to
6 commissioner--Review) and 2001 c 179 s 5;

7 (23) RCW 48.31C.060 (Extraordinary dividends or distributions--
8 Restrictions--Definition of distribution) and 2001 c 179 s 6;

9 (24) RCW 48.31C.070 (Examination of health carriers--Commissioner
10 may order production of information--Failure to comply--Costs) and 2001
11 c 179 s 7;

12 (25) RCW 48.31C.080 (Violations of chapter--Commissioner may seek
13 superior court order) and 2001 c 179 s 8;

14 (26) RCW 48.31C.090 (Violations of chapter--Penalties--Civil
15 forfeitures--Orders--Referral to prosecuting attorney--Imprisonment)
16 and 2001 c 179 s 9;

17 (27) RCW 48.31C.100 (Violations of chapter--Impairment of financial
18 condition) and 2001 c 179 s 10;

19 (28) RCW 48.31C.110 (Order for liquidation or rehabilitation--
20 Recovery of distributions or payments--Liability--Maximum amount
21 recoverable) and 2001 c 179 s 11;

22 (29) RCW 48.31C.120 (Violations of chapter--Contrary to interests
23 of subscribers or the public) and 2001 c 179 s 12;

24 (30) RCW 48.31C.130 (Confidential proprietary and trade secret
25 information--Exempt from public disclosure--Exceptions) and 2001 c 179
26 s 13;

27 (31) RCW 48.31C.140 (Person aggrieved by actions of commissioner)
28 and 2001 c 179 s 15;

29 (32) RCW 48.31C.150 (Rule making) and 2001 c 179 s 16;

30 (33) RCW 48.31C.160 (Dual holding company system membership) and
31 2001 c 179 s 17;

32 (34) RCW 48.31C.900 (Severability--2001 c 179) and 2001 c 179 s 18;
33 and

34 (35) RCW 48.31C.901 (Effective date--2001 c 179) and 2001 c 179 s
35 19.

36 NEW SECTION. **Sec. 30.** SEVERABILITY. If any provision of this act

1 or its application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 31.** SHORT TITLE. This chapter may be known and
5 cited as the insurer holding company act.

6 NEW SECTION. **Sec. 32.** Sections 1 through 16 and 31 of this act
7 are each added to chapter 48.31B RCW.

8 NEW SECTION. **Sec. 33.** PURPOSE AND SCOPE. (1) The purpose of this
9 chapter is to provide the requirements for maintaining a risk
10 management framework and completing an own risk and solvency assessment
11 and provide guidance and instructions for filing an ORSA summary report
12 with the insurance commissioner of this state.

13 (2) The requirements of this chapter apply to all insurers
14 domiciled in this state unless exempt pursuant to section 38 of this
15 act.

16 (3) The legislature finds and declares that the ORSA summary report
17 contains confidential and sensitive information related to an insurer
18 or insurance group's identification of risks material and relevant to
19 the insurer or insurance group filing the report. This information
20 includes proprietary and trade secret information that has the
21 potential for harm and competitive disadvantage to the insurer or
22 insurance group if the information is made public. It is the intent of
23 this legislature that the ORSA summary report is a confidential
24 document filed with the commissioner, that the ORSA summary report may
25 be shared only as stated in this chapter and to assist the commissioner
26 in the performance of his or her duties, and that in no event may the
27 ORSA summary report be subject to public disclosure.

28 NEW SECTION. **Sec. 34.** DEFINITIONS. The definitions in this
29 section apply throughout this chapter unless the context clearly
30 requires otherwise.

31 (1) "Insurance group" means, for the purposes of conducting an
32 ORSA, those insurers and affiliates included within an insurance
33 holding company system as defined in section 1 of this act.

1 (2) "Insurer" includes an insurer authorized under chapter 48.05
2 RCW, a fraternal mutual insurer or society holding a license under RCW
3 48.36A.290, a health care service contractor registered under chapter
4 48.44 RCW, a health maintenance organization registered under chapter
5 48.46 RCW, and a self-funded multiple employer welfare arrangement
6 under chapter 48.125 RCW, as well as all persons engaged as, or
7 purporting to be engaged as insurers, fraternal benefit societies,
8 health care service contractors, health maintenance organizations, or
9 self-funded multiple employer welfare arrangements in this state, and
10 to persons in process of organization to become insurers, fraternal
11 benefit societies, health care service contractors, health maintenance
12 organizations, or self-funded multiple employer welfare arrangements,
13 except that it does not include agencies, authorities, or
14 instrumentalities of the United States, its possessions and
15 territories, the Commonwealth of Puerto Rico, the District of Columbia,
16 or a state or political subdivision of a state.

17 (3) "Own risk and solvency assessment" or "ORSA" means a
18 confidential internal assessment, appropriate to the nature, scale, and
19 complexity of an insurer or insurance group, conducted by that insurer
20 or insurance group of the material and relevant risks associated with
21 the insurer or insurance group's current business plan, and the
22 sufficiency of capital resources to support those risks.

23 (4) "ORSA guidance manual" means the own risk and solvency
24 assessment guidance manual developed and adopted by the national
25 association of insurance commissioners as of the effective date of this
26 section. A change in the ORSA guidance manual is effective on January
27 1st following the calendar year in which the changes are adopted by
28 rule of the insurance commissioner.

29 (5) "ORSA summary report" means a confidential high-level ORSA
30 summary of an insurer or insurance group.

31 NEW SECTION. **Sec. 35.** RISK MANAGEMENT FRAMEWORK. An insurer
32 shall maintain a risk management framework to assist the insurer with
33 identifying, assessing, monitoring, managing, and reporting on its
34 material and relevant risks. This requirement is satisfied if the
35 insurance group of which the insurer is a member maintains a risk
36 management framework applicable to the operations of the insurer.

1 NEW SECTION. **Sec. 36.** ORSA REQUIREMENT. Subject to section 38 of
2 this act, an insurer, or the insurance group of which the insurer is a
3 member, shall regularly conduct an ORSA consistent with a process
4 comparable to the ORSA guidance manual. The ORSA must be conducted
5 annually but also at any time when there are significant changes to the
6 risk profile of the insurer or the insurance group of which the insurer
7 is a member.

8 NEW SECTION. **Sec. 37.** ORSA SUMMARY REPORT. (1) Upon the
9 commissioner's request, and no more than once each year, an insurer
10 shall submit to the commissioner an ORSA summary report or any
11 combination of reports that together contain the information described
12 in the ORSA guidance manual, applicable to the insurer or the insurance
13 group of which it is a member. Notwithstanding any request from the
14 commissioner, if the insurer is a member of an insurance group, the
15 insurer shall submit the report or set of reports required by this
16 subsection if the commissioner is the lead state commissioner of the
17 insurance group as determined by the procedures within the financial
18 analysis handbook adopted by the national association of insurance
19 commissioners.

20 (2) The report shall include a signature of the insurer or
21 insurance group's chief risk officer or other executive having
22 responsibility for the oversight of the insurer's enterprise risk
23 management process attesting to the best of his or her belief and
24 knowledge that the insurer applies the enterprise risk management
25 process described in the ORSA summary report and that a copy of the
26 report has been provided to the insurer's board of directors or the
27 appropriate governing committee.

28 (3) An insurer may comply with subsection (1) of this section by
29 providing the most recent and substantially similar report or reports
30 provided by the insurer or another member of an insurance group of
31 which the insurer is a member to the commissioner of another state or
32 to a supervisor or regulator of a foreign jurisdiction, if that report
33 provides information that is comparable to the information described in
34 the ORSA guidance manual. Any such report in a language other than
35 English must be accompanied by a translation of that report into the
36 English language.

1 (4) Beginning in 2015, an insurer which is required to submit an
2 ORSA summary report to the commissioner shall file its report annually
3 by June 30th of each year for its current calendar year ORSA. If it is
4 impractical to furnish the ORSA summary report at the time it is
5 required to be filed, an insurer must file a written request for
6 extension with the commissioner at least ten days prior to the due date
7 of the filing. The request for extension shall state why the filing at
8 the time is impractical and requesting an extension of time for filing
9 the report to a specified date. An extension must be granted in
10 writing.

11 NEW SECTION. **Sec. 38.** EXEMPTIONS. (1) An insurer is exempt from
12 the requirements of this chapter, if:

13 (a) The insurer has annual direct written and unaffiliated assumed
14 premium including international direct and assumed premium, but
15 excluding premium reinsured with the federal crop insurance corporation
16 and federal flood program, less than five hundred million dollars; and

17 (b) The insurance group of which the insurer is a member has annual
18 direct written and unaffiliated assumed premium including international
19 direct and assumed premium, but excluding premium reinsured with the
20 federal crop insurance corporation and federal flood program, less than
21 one billion dollars.

22 (2) If an insurer qualifies for exemption pursuant to subsection
23 (1)(a) of this section, but the insurance group of which the insurer is
24 a member does not qualify for exemption pursuant to subsection (1)(b)
25 of this section, then the ORSA summary report that may be required
26 pursuant to section 37 of this act must include every insurer within
27 the insurance group. This requirement is satisfied by the submission
28 of more than one ORSA summary report for any combination of insurers,
29 provided any combination of reports includes every insurer within the
30 insurance group.

31 (3) If an insurer does not qualify for exemption pursuant to
32 subsection (1)(a) of this section, but the insurance group of which the
33 insurer is a member does qualify for exemption pursuant to subsection
34 (1)(b) of this section, then the only ORSA summary report that may be
35 required pursuant to section 37 of this act is the report applicable to
36 that insurer.

1 (4) If an insurer does not qualify for exemption pursuant to
2 subsection (1)(a) of this section, the insurer may apply to the
3 commissioner for a waiver from the requirements of this chapter based
4 upon unique circumstances. In deciding whether to grant the insurer's
5 request for waiver, the commissioner may consider the type and volume
6 of business written, ownership and organizational structure, and any
7 other factor the commissioner considers relevant to the insurer or
8 insurance group of which the insurer is a member. If the insurer is a
9 part of an insurance group with insurers domiciled in more than one
10 state, the commissioner shall coordinate with the lead state
11 commissioner and with the other domiciliary commissioners in
12 considering whether to grant the insurer's request for a waiver.

13 (5) Notwithstanding the exemptions stated in this section, the
14 commissioner may require that an insurer maintain a risk management
15 framework, conduct an ORSA, and file an ORSA summary report (a) based
16 on unique circumstances including, but not limited to, the type and
17 volume of business written, ownership and organizational structure,
18 federal agency requests, and international supervisor requests; and (b)
19 if the insurer has risk-based capital at the company action level event
20 as set forth in RCW 48.05.440 or 48.43.310, meets one or more of the
21 standards of an insurer deemed to be in hazardous financial condition
22 as defined in WAC 284-16-310, or otherwise exhibits qualities of a
23 troubled insurer as determined by the commissioner.

24 (6) If an insurer that qualifies for exemption pursuant to
25 subsection (1)(a) of this section subsequently no longer qualifies for
26 that exemption due to changes in premium reflected in the insurer's
27 most recent annual statement or in the most recent annual statements of
28 the insurers within the insurance group of which the insurer is a
29 member, the insurer has one year following the year the threshold is
30 exceeded to comply with the requirement of this chapter.

31 NEW SECTION. **Sec. 39.** CONTENTS OF ORSA SUMMARY REPORT. (1) The
32 ORSA summary report shall be prepared consistent with the ORSA guidance
33 manual, subject to the requirements of subsection (2) of this section.
34 Documentation and supporting information must be maintained and made
35 available upon examination or upon the request of the commissioner.

36 (2) The review of the ORSA summary report, and any additional

1 requests for information, must be made using similar procedures
2 currently used in the analysis and examination of multistate or global
3 insurers and insurance groups.

4 NEW SECTION. **Sec. 40.** CONFIDENTIAL TREATMENT. (1) Documents,
5 materials, or other information, including the ORSA summary report, in
6 the possession or control of the commissioner that are obtained by,
7 created by, or disclosed to the commissioner or any other person under
8 this chapter, is recognized by this state as being proprietary and to
9 contain trade secrets. All such documents, materials, or other
10 information is confidential by law and privileged, is not subject to
11 chapter 42.56 RCW, is not subject to subpoena, and is not subject to
12 discovery or admissible in evidence in any private civil action.
13 However, the commissioner is authorized to use the documents,
14 materials, or other information in the furtherance of any regulatory or
15 legal action brought as a part of the commissioner's official duties.
16 The commissioner may not otherwise make the documents, materials, or
17 other information public without the prior written consent of the
18 insurer.

19 (2) Neither the commissioner nor any person who received documents,
20 materials, or other ORSA-related information, through examination or
21 otherwise, while acting under the authority of the commissioner or with
22 whom such documents, materials, or other information are shared
23 pursuant to this chapter, is permitted or required to testify in any
24 private civil action concerning any confidential documents, materials,
25 or information subject to subsection (1) of this section.

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

28 (a) May share documents, materials, or other ORSA-related
29 information, including the confidential and privileged documents,
30 materials, or information subject to subsection (1) of this section,
31 including proprietary and trade secret documents and materials with
32 other state, federal, and international regulatory agencies, including
33 members of any supervisory college under section 8(3) of this act, with
34 the national association of insurance commissioners, with the
35 international association of insurance supervisors and the bank for
36 international settlements, and with any third-party consultants
37 designated by the commissioner, provided that the recipient agrees in

1 writing to maintain the confidentiality and privileged status of the
2 ORSA-related documents, materials, or other information and has
3 verified in writing the legal authority to maintain confidentiality;

4 (b) May receive documents, materials, or ORSA-related information,
5 including otherwise confidential and privileged documents, materials,
6 or information, including proprietary and trade secret information or
7 documents, from regulatory officials of other foreign or domestic
8 jurisdictions, including members of any supervisory college under
9 section 8(3) of this act, from the national association of insurance
10 commissioners, the international association of insurance supervisors
11 and the bank for international settlements, and must maintain as
12 confidential or privileged any document, material, or information
13 received with notice or the understanding that it is confidential or
14 privileged under the laws of the jurisdiction that is the source of the
15 document, material, or information;

16 (c) Shall enter into written agreements with the national
17 association of insurance commissioners or a third-party consultant
18 governing sharing and use of information provided pursuant to this
19 chapter, consistent with this subsection that specifies procedures and
20 protocols regarding the confidentiality and security of information
21 shared with the national association of insurance commissioners or
22 third-party consultant pursuant to this chapter, including procedures
23 and protocols for sharing by the national association of insurance
24 commissioners with other state regulators from states in which the
25 insurance group has domiciled insurers. The agreement must provide
26 that the recipient agrees in writing to maintain the confidentiality
27 and privileged status of the ORSA-related documents, materials, or
28 other information and has verified in writing the legal authority to
29 maintain confidentiality;

30 (d) Shall specify that ownership of information shared with the
31 national association of insurance commissioners or third-party
32 consultants pursuant to this chapter remains with the commissioner and
33 the national association of insurance commissioners' or a third-party
34 consultant's use of the information is subject to the direction of the
35 commissioner;

36 (e) Shall prohibit the national association of insurance
37 commissioners or third-party consultant from storing the information

1 shared pursuant to this chapter in a permanent database after the
2 underlying analysis is completed;

3 (f) Shall require prompt notice to be given to an insurer whose
4 confidential information in the possession of the national association
5 of insurance commissioners or a third-party consultant pursuant to this
6 chapter is subject to a request or subpoena to the national association
7 of insurance commissioners for disclosure or production;

8 (g) Shall require the national association of insurance
9 commissioners and its affiliates and subsidiaries to consent to
10 intervention by an insurer in any judicial or administrative action in
11 which the national association of insurance commissioners and its
12 affiliates and subsidiaries may be required to disclose confidential
13 information about the insurer shared with the national association of
14 insurance commissioners and its affiliates and subsidiaries pursuant to
15 this chapter; and

16 (h) In the case of an agreement involving a third-party consultant,
17 shall provide the insurer's written consent.

18 (4) The sharing of information by the commissioner pursuant to this
19 chapter shall not constitute a delegation of regulatory authority or
20 rule making, and the commissioner is solely responsible for the
21 administration, execution, and enforcement of the provisions of this
22 chapter.

23 (5) A waiver of any applicable privilege or claim of
24 confidentiality in the documents, materials, or information shall not
25 occur as a result of disclosure to the commissioner under this section
26 or as a result of sharing as authorized in this chapter.

27 (6) Documents, materials, or other information in the possession or
28 control of the national association of insurance commissioners pursuant
29 to this chapter are confidential by law and privileged, are not
30 subject to chapter 42.56 RCW, are not subject to subpoena, and are not
31 subject to discovery or admissible in evidence in any private civil
32 action.

33 NEW SECTION. **Sec. 41.** SANCTIONS. The commissioner shall require
34 any insurer failing, without just cause, to file the ORSA summary
35 report as required in this chapter, after notice and hearing, to pay a
36 fine of five hundred dollars for each day's delay, to be recovered by
37 the commissioner and the fine collected shall be transferred to the

1 treasurer for deposit into the state general fund. The maximum fine
2 under this section is one hundred thousand dollars. The commissioner
3 may reduce the fine if the insurer demonstrates to the commissioner
4 that the imposition of the fine would constitute a financial hardship
5 to the insurer.

6 **Sec. 42.** RCW 42.56.400 and 2013 c 277 s 5 and 2013 c 65 s 5 are
7 each reenacted and amended to read as follows:

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

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

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

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

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

24 (5) Information provided under RCW 48.05.510 through 48.05.535,
25 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
26 through 48.46.625;

27 (6) Examination reports and information obtained by the department
28 of financial institutions from banks under RCW 30.04.075, from savings
29 banks under RCW 32.04.220, from savings and loan associations under RCW
30 33.04.110, from credit unions under RCW 31.12.565, from check cashers
31 and sellers under RCW 31.45.030(3), and from securities brokers and
32 investment advisers under RCW 21.20.100, all of which is confidential
33 and privileged information;

34 (7) Information provided to the insurance commissioner under RCW
35 48.110.040(3);

36 (8) Documents, materials, or information obtained by the insurance

1 commissioner under RCW 48.02.065, all of which are confidential and
2 privileged;

3 (9) (~~Confidential proprietary and trade secret information~~
4 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~
5 ~~and 48.31C.070~~) Documents, materials, or information obtained by the
6 insurance commissioner under sections 5(12) and 8 of this act, all of
7 which are confidential and privileged;

8 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
9 7.70.140 that, alone or in combination with any other data, may reveal
10 the identity of a claimant, health care provider, health care facility,
11 insuring entity, or self-insurer involved in a particular claim or a
12 collection of claims. For the purposes of this subsection:

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

14 (b) "Health care facility" has the same meaning as in RCW
15 48.140.010(6).

16 (c) "Health care provider" has the same meaning as in RCW
17 48.140.010(7).

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

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

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

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

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

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

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

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

32 (17) Documents, materials, or information obtained by the insurance
33 commissioner in the commissioner's capacity as receiver under RCW
34 48.31.025 and 48.99.017, which are records under the jurisdiction and
35 control of the receivership court. The commissioner is not required to
36 search for, log, produce, or otherwise comply with the public records
37 act for any records that the commissioner obtains under chapters 48.31

1 and 48.99 RCW in the commissioner's capacity as a receiver, except as
2 directed by the receivership court;

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

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

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

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

13 (22) Data, information, and documents obtained by the insurance
14 commissioner under RCW 48.29.017; (~~and~~)

15 (23) Information not subject to public inspection or public
16 disclosure under RCW 48.43.730(5); and

17 (24) Documents, materials, or information obtained by the insurance
18 commissioner under chapter 48.-- RCW (sections 33 through 41 and 46 of
19 this act).

20 **Sec. 43.** RCW 42.56.400 and 2013 c 65 s 5 are each amended to read
21 as follows:

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

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

27 (2) Information obtained and exempted or withheld from public
28 inspection by the health care authority under RCW 41.05.026, whether
29 retained by the authority, transferred to another state purchased
30 health care program by the authority, or transferred by the authority
31 to a technical review committee created to facilitate the development,
32 acquisition, or implementation of state purchased health care under
33 chapter 41.05 RCW;

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

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

1 (5) Information provided under RCW 48.05.510 through 48.05.535,
2 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
3 through 48.46.625;

4 (6) Examination reports and information obtained by the department
5 of financial institutions from banks under RCW 30.04.075, from savings
6 banks under RCW 32.04.220, from savings and loan associations under RCW
7 33.04.110, from credit unions under RCW 31.12.565, from check cashers
8 and sellers under RCW 31.45.030(3), and from securities brokers and
9 investment advisers under RCW 21.20.100, all of which is confidential
10 and privileged information;

11 (7) Information provided to the insurance commissioner under RCW
12 48.110.040(3);

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

16 (9) (~~Confidential proprietary and trade secret information~~
17 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~
18 ~~and 48.31C.070~~) Documents, materials, or information obtained by the
19 insurance commissioner under sections 5(12) and 8 of this act, all of
20 which are confidential and privileged;

21 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
22 7.70.140 that, alone or in combination with any other data, may reveal
23 the identity of a claimant, health care provider, health care facility,
24 insuring entity, or self-insurer involved in a particular claim or a
25 collection of claims. For the purposes of this subsection:

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

27 (b) "Health care facility" has the same meaning as in RCW
28 48.140.010(6).

29 (c) "Health care provider" has the same meaning as in RCW
30 48.140.010(7).

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

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

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

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

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

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

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

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

7 (17) Documents, materials, or information obtained by the insurance
8 commissioner in the commissioner's capacity as receiver under RCW
9 48.31.025 and 48.99.017, which are records under the jurisdiction and
10 control of the receivership court. The commissioner is not required to
11 search for, log, produce, or otherwise comply with the public records
12 act for any records that the commissioner obtains under chapters 48.31
13 and 48.99 RCW in the commissioner's capacity as a receiver, except as
14 directed by the receivership court;

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

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

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

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

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

27 (23) Documents, materials, or information obtained by the insurance
28 commissioner under chapter 48.-- RCW (sections 33 through 41 and 46 of
29 this act).

30 NEW SECTION. Sec. 44. SEVERABILITY. If any provision of this act
31 or its application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. Sec. 45. Sections 33 through 41 and 46 of this act
35 constitute a new chapter in Title 48 RCW.

1 NEW SECTION. **Sec. 46.** SHORT TITLE. This chapter may be known and
2 cited as the risk management and solvency assessment act.

3 NEW SECTION. **Sec. 47.** EFFECTIVE DATE. Except for sections 18 and
4 43 of this act, which take effect July 1, 2017, this act takes effect
5 January 1, 2015.

6 NEW SECTION. **Sec. 48.** Sections 17 and 42 of this act expire July
7 1, 2017.

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