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SENATE BILL 5169

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Roach and Hasegawa; by request of Public Records Exemptions  
Accountability Committee

Read first time 01/22/13. Referred to Committee on Governmental Operations.

1 AN ACT Relating to implementing recommendations of the sunshine  
2 committee; amending RCW 42.56.330, 48.37.060, and 70.148.060; and  
3 reenacting and amending RCW 42.56.230 and 42.56.250.

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

5 **Sec. 1.** RCW 42.56.230 and 2011 c 350 s 2 and 2011 c 173 s 1 are  
6 each reenacted and amended to read as follows:

7 The following personal information is exempt from public inspection  
8 and copying under this chapter:

9 (1) Personal information in any files maintained for students in  
10 public schools, patients or clients of public institutions or public  
11 health agencies, or welfare recipients;

12 (2) Personal information((~~7~~)) including, but not limited to,  
13 addresses, telephone numbers, personal electronic mail addresses,  
14 social security numbers, emergency contact and date of birth  
15 information for a participant in a public or nonprofit program serving  
16 or pertaining to children, adolescents, or students, including but not  
17 limited to early learning or child care services, parks and recreation  
18 programs, youth development programs, and after-school programs.

1 Emergency contact information may be provided to appropriate  
2 authorities and medical personnel for the purpose of treating the  
3 individual during an emergency situation;

4 (3) Personal information in files maintained for employees,  
5 appointees, or elected officials of any public agency to the extent  
6 that disclosure would violate their right to privacy;

7 (4) Information required of any taxpayer in connection with the  
8 assessment or collection of any tax if the disclosure of the  
9 information to other persons would: (a) Be prohibited to such persons  
10 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance  
11 authorized under RCW 35.102.145; or (b) violate the taxpayer's right to  
12 privacy or result in unfair competitive disadvantage to the taxpayer;

13 (5) Credit card numbers, debit card numbers, electronic check  
14 numbers, card expiration dates, or bank or other financial (~~account~~  
15 ~~numbers~~) information as defined in RCW 9.35.005 including social  
16 security numbers, except when disclosure is expressly required by or  
17 governed by other law;

18 (6) Personal and financial information related to a small loan or  
19 any system of authorizing a small loan in RCW 31.45.093; and

20 (7)(a) Documents and related materials and scanned images of  
21 documents and related materials used to prove identity, age,  
22 residential address, social security number, or other personal  
23 information required to apply for a driver's license or identicard.

24 (b) Information provided under RCW 46.20.111 that indicates that an  
25 applicant declined to register with the selective service system.

26 **Sec. 2.** RCW 42.56.250 and 2010 c 257 s 1 and 2010 c 128 s 9 are  
27 each reenacted and amended to read as follows:

28 The following employment and licensing information is exempt from  
29 public inspection and copying under this chapter:

30 (1) Test questions, scoring keys, and other examination data used  
31 to administer a license, employment, or academic examination;

32 (2) All applications for public employment, including the names of  
33 applicants, resumes, and other related materials submitted with respect  
34 to an applicant, subject to the following exceptions:

35 (a) The applications of finalists applying for the highest  
36 management position in a public agency, county, or local government

1 department with confidential reference information removed or redacted  
2 is not exempt from inspection and copying; and

3 (b) Application materials not exempt from inspection and copying  
4 must be available to the public after the finalists are selected, but  
5 before the agency, county, or local government makes its decision;

6 (3) The residential addresses, residential telephone numbers,  
7 personal wireless telephone numbers, personal electronic mail  
8 addresses, social security numbers, and emergency contact information  
9 of employees or volunteers of a public agency, and the names, dates of  
10 birth, residential addresses, residential telephone numbers, personal  
11 wireless telephone numbers, personal electronic mail addresses, social  
12 security numbers, and emergency contact information of dependents of  
13 employees or volunteers of a public agency that are held by any public  
14 agency in personnel records, public employment related records, or  
15 volunteer rosters, or are included in any mailing list of employees or  
16 volunteers of any public agency. For purposes of this subsection,  
17 "employees" includes independent provider home care workers as defined  
18 in RCW 74.39A.240;

19 (4) Information that identifies a person who, while an agency  
20 employee: (a) Seeks advice, under an informal process established by  
21 the employing agency, in order to ascertain his or her rights in  
22 connection with a possible unfair practice under chapter 49.60 RCW  
23 against the person; and (b) requests his or her identity or any  
24 identifying information not be disclosed;

25 (5) Investigative records compiled by an employing agency  
26 conducting an active and ongoing investigation of a possible unfair  
27 practice under chapter 49.60 RCW or of a possible violation of other  
28 federal, state, or local laws prohibiting discrimination in employment;

29 (6) Criminal history records checks for board staff finalist  
30 candidates conducted pursuant to RCW 43.33A.025;

31 (7) Except as provided in RCW 47.64.220, salary and benefit  
32 information for maritime employees collected from private employers  
33 under RCW 47.64.220(1) and described in RCW 47.64.220(2); and

34 (8) Photographs and month and year of birth in the personnel files  
35 of employees and workers of criminal justice agencies as defined in RCW  
36 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have  
37 access to the photographs and full date of birth. For the purposes of

1 this subsection, news media does not include any person or organization  
2 of persons in the custody of a criminal justice agency as defined in  
3 RCW 10.97.030.

4 For the purposes of this section, "employment" does not include  
5 service on boards or commissions where the individual does not receive  
6 pay or benefits, even if that individual may receive minimal  
7 reimbursement or stipend for expenses.

8 **Sec. 3.** RCW 42.56.330 and 2012 c 68 s 4 are each amended to read  
9 as follows:

10 The following information relating to public utilities and  
11 transportation is exempt from disclosure under this chapter:

12 (1) Records filed with the utilities and transportation commission  
13 or attorney general under RCW 80.04.095 that a court has determined are  
14 confidential under RCW 80.04.095;

15 (2) The residential addresses and residential telephone numbers of  
16 the customers of a public utility contained in the records or lists  
17 held by the public utility of which they are customers, except that  
18 this information may be released to the division of child support or  
19 the agency or firm providing child support enforcement for another  
20 state under Title IV-D of the federal social security act, for the  
21 establishment, enforcement, or modification of a support order;

22 (3) The names, residential addresses, residential telephone  
23 numbers, and other individually identifiable records held by an agency  
24 in relation to a vanpool, carpool, or other ride-sharing program or  
25 service(~~;- however, these records~~). Participant's names, general  
26 locations, and e-mail addresses may be disclosed to other persons who  
27 apply for ride-matching services and who need that information in order  
28 to identify potential riders or drivers with whom to share rides;

29 (4) The personally identifying information of current or former  
30 participants or applicants in a paratransit or other transit service  
31 operated for the benefit of persons with disabilities or elderly  
32 persons;

33 (5) The personally identifying information of persons who acquire  
34 and use transit passes or other fare payment media including, but not  
35 limited to, stored value smart cards and magnetic strip cards, except  
36 that an agency may disclose personally identifying information to a  
37 person, employer, educational institution, or other entity that is

1 responsible, in whole or in part, for payment of the cost of acquiring  
2 or using a transit pass or other fare payment media for the purpose of  
3 preventing fraud(~~(, or to the news media when reporting on public~~  
4 ~~transportation or public safety)~~). As used in this subsection,  
5 "personally identifying information" includes acquisition or use  
6 information pertaining to a specific, individual transit pass or fare  
7 payment media.

8 (a) Information regarding the acquisition or use of transit passes  
9 or fare payment media may be disclosed in aggregate form if the data  
10 does not contain any personally identifying information.

11 (b) Personally identifying information may be released to law  
12 enforcement agencies if the request is accompanied by a court order;

13 (6) Any information obtained by governmental agencies that is  
14 collected by the use of a motor carrier intelligent transportation  
15 system or any comparable information equipment attached to a truck,  
16 tractor, or trailer; however, the information may be given to other  
17 governmental agencies or the owners of the truck, tractor, or trailer  
18 from which the information is obtained. As used in this subsection,  
19 "motor carrier" has the same definition as provided in RCW 81.80.010;

20 (7) The personally identifying information of persons who acquire  
21 and use transponders or other technology to facilitate payment of  
22 tolls. This information may be disclosed in aggregate form as long as  
23 the data does not contain any personally identifying information. For  
24 these purposes aggregate data may include the census tract of the  
25 account holder as long as any individual personally identifying  
26 information is not released. Personally identifying information may be  
27 released to law enforcement agencies only for toll enforcement  
28 purposes. Personally identifying information may be released to law  
29 enforcement agencies for other purposes only if the request is  
30 accompanied by a court order; and

31 (8) The personally identifying information of persons who acquire  
32 and use a driver's license or identicard that includes a radio  
33 frequency identification chip or similar technology to facilitate  
34 border crossing. This information may be disclosed in aggregate form  
35 as long as the data does not contain any personally identifying  
36 information. Personally identifying information may be released to law  
37 enforcement agencies only for United States customs and border

1 protection enforcement purposes. Personally identifying information  
2 may be released to law enforcement agencies for other purposes only if  
3 the request is accompanied by a court order.

4 **Sec. 4.** RCW 48.37.060 and 2011 1st sp.s. c 43 s 460 are each  
5 amended to read as follows:

6 (1) When the commissioner determines that other market conduct  
7 actions identified in RCW 48.37.040(4)(a) have not sufficiently  
8 addressed issues raised concerning company activities in Washington  
9 state, the commissioner has the discretion to conduct market conduct  
10 examinations in accordance with the NAIC market conduct uniform  
11 examination procedures and the NAIC market regulation handbook.

12 (2)(a) In lieu of an examination of an insurer licensed in this  
13 state, the commissioner shall accept an examination report of another  
14 state, unless the commissioner determines that the other state does not  
15 have laws substantially similar to those of this state, or does not  
16 have a market oversight system that is comparable to the market conduct  
17 oversight system set forth in this law.

18 (b) The commissioner's determination under (a) of this subsection  
19 is discretionary with the commissioner and is not subject to appeal.

20 (c) If the insurer to be examined is part of an insurance holding  
21 company system, the commissioner may also seek to simultaneously  
22 examine any affiliates of the insurer under common control and  
23 management which are licensed to write the same lines of business in  
24 this state.

25 (3) Before commencement of a market conduct examination, market  
26 conduct oversight personnel shall prepare a work plan consisting of the  
27 following:

- 28 (a) The name and address of the insurer being examined;
- 29 (b) The name and contact information of the examiner-in-charge;
- 30 (c) The name of all market conduct oversight personnel initially  
31 assigned to the market conduct examination;
- 32 (d) The justification for the examination;
- 33 (e) The scope of the examination;
- 34 (f) The date the examination is scheduled to begin;
- 35 (g) Notice of any noninsurance department personnel who will assist  
36 in the examination;
- 37 (h) A time estimate for the examination;

1 (i) A budget for the examination if the cost of the examination is  
2 billed to the insurer; and

3 (j) An identification of factors that will be included in the  
4 billing if the cost of the examination is billed to the insurer.

5 (4)(a) Within ten days of the receipt of the information contained  
6 in subsection (3) of this section, insurers may request the  
7 commissioner's discretionary review of any alleged conflict of  
8 interest, pursuant to RCW 48.37.090(2), of market conduct oversight  
9 personnel and noninsurance department personnel assigned to a market  
10 conduct examination. The request for review shall specifically  
11 describe the alleged conflict of interest in the proposed assignment of  
12 any person to the examination.

13 (b) Within five business days of receiving a request for  
14 discretionary review of any alleged conflict of interest in the  
15 proposed assignment of any person to a market conduct examination, the  
16 commissioner or designee shall notify the insurer of any action  
17 regarding the assignment of personnel to a market conduct examination  
18 based on the insurer's allegation of conflict of interest.

19 (5) Market conduct examinations shall, to the extent feasible, use  
20 desk examinations and data requests before an on-site examination.

21 (6) Market conduct examinations shall be conducted in accordance  
22 with the provisions set forth in the NAIC market regulation handbook  
23 and the NAIC market conduct uniform examinations procedures, subject to  
24 the precedence of the provisions of chapter 82, Laws of 2007.

25 (7) The commissioner shall use the NAIC standard data request.

26 (8) Announcement of the examination shall be sent to the insurer  
27 and posted on the NAIC's examination tracking system as soon as  
28 possible but in no case later than sixty days before the estimated  
29 commencement of the examination, except where the examination is  
30 conducted in response to extraordinary circumstances as described in  
31 RCW 48.37.050(2)(a). The announcement sent to the insurer shall  
32 contain the examination work plan and a request for the insurer to name  
33 its examination coordinator.

34 (9) If an examination is expanded significantly beyond the original  
35 reasons provided to the insurer in the notice of the examination  
36 required by subsection (3) of this section, the commissioner shall  
37 provide written notice to the insurer, explaining the expansion and  
38 reasons for the expansion. The commissioner shall provide a revised

1 work plan if the expansion results in significant changes to the items  
2 presented in the original work plan required by subsection (3) of this  
3 section.

4 (10) The commissioner shall conduct a preexamination conference  
5 with the insurer examination coordinator and key personnel to clarify  
6 expectations at least thirty days before commencement of the  
7 examination, unless otherwise agreed by the insurer and the  
8 commissioner.

9 (11) Before the conclusion of the field work for market conduct  
10 examination, the examiner-in-charge shall review examination findings  
11 to date with insurer personnel and schedule an exit conference with the  
12 insurer, in accordance with procedures in the NAIC market regulation  
13 handbook.

14 (12)(a) No later than sixty days after completion of each market  
15 conduct examination, the commissioner shall make a full written report  
16 of each market conduct examination containing only facts ascertained  
17 from the accounts, records, and documents examined and from the sworn  
18 testimony of individuals, and such conclusions and recommendations as  
19 may reasonably be warranted from such facts.

20 (b) The report shall be certified by the commissioner or by the  
21 examiner-in-charge of the examination, and shall be filed in the  
22 commissioner's office subject to (c) of this subsection.

23 (c) The commissioner shall furnish a copy of the market conduct  
24 examination report to the person examined not less than ten days and,  
25 unless the time is extended by the commissioner, not more than thirty  
26 days prior to the filing of the report for public inspection in the  
27 commissioner's office. If the person so requests in writing within  
28 such period, the commissioner shall hold a hearing to consider  
29 objections of such person to the report as proposed, and shall not so  
30 file the report until after such hearing and until after any  
31 modifications in the report deemed necessary by the commissioner have  
32 been made.

33 (d) Within thirty days of the end of the period described in (c) of  
34 this subsection, unless extended by order of the commissioner, the  
35 commissioner shall consider the report, together with any written  
36 submissions or rebuttals and any relevant portions of the examiner's  
37 work papers and enter an order:

1 (i) Adopting the market conduct examination report as filed or with  
2 modification or corrections. If the market conduct examination report  
3 reveals that the company is operating in violation of any law, rule, or  
4 order of the commissioner, the commissioner may order the company to  
5 take any action the commissioner considers necessary and appropriate to  
6 cure that violation;

7 (ii) Rejecting the market conduct examination report with  
8 directions to the examiners to reopen the examination for purposes of  
9 obtaining additional data, documentation, or information, and refiling  
10 under this subsection; or

11 (iii) Calling for an investigatory hearing with no less than twenty  
12 days' notice to the company for purposes of obtaining additional  
13 documentation, data, information, and testimony.

14 (e) All orders entered under (d) of this subsection must be  
15 accompanied by findings and conclusions resulting from the  
16 commissioner's consideration and review of the market conduct  
17 examination report, relevant examiner work papers, and any written  
18 submissions or rebuttals. The order is considered a final  
19 administrative decision and may be appealed under the administrative  
20 procedure act, chapter 34.05 RCW, and must be served upon the company  
21 by certified mail or certifiable electronic means, together with a copy  
22 of the adopted examination report. A copy of the adopted examination  
23 report must be sent by certified mail or certifiable electronic means  
24 to each director at the director's residential address or to a personal  
25 e-mail account.

26 (f)(i) Upon the adoption of the market conduct examination report  
27 under (d) of this subsection, the commissioner shall continue to hold  
28 the content of the examination report as private and confidential  
29 information for a period of five days except that the order may be  
30 disclosed to the person examined. Thereafter, the commissioner (~~may~~)  
31 must open the report for public inspection so long as no court of  
32 competent jurisdiction has stayed its publication.

33 (ii) If the commissioner determines that regulatory action is  
34 appropriate as a result of any market conduct examination, he or she  
35 may initiate any proceedings or actions as provided by law.

36 (iii) Nothing contained in this subsection requires the  
37 commissioner to disclose any information or records that would indicate

1 or show the existence or content of any investigation or activity of a  
2 criminal justice agency.

3 (g) The insurer's response shall be included in the commissioner's  
4 order adopting the final report as an exhibit to the order. The  
5 insurer is not obligated to submit a response.

6 (13) Except as provided in subsection (12)(f)(i) of this section,  
7 the commissioner may withhold from public inspection any examination or  
8 investigation report for so long as he or she deems it advisable.

9 (14)(a) Market conduct examinations within this state of any  
10 insurer domiciled or having its home offices in this state, other than  
11 a title insurer, made by the commissioner or the commissioner's  
12 examiners and employees shall, except as to fees, mileage, and expense  
13 incurred as to witnesses, be at the expense of the state.

14 (b) Every other examination, whatsoever, or any part of the market  
15 conduct examination of any person domiciled or having its home offices  
16 in this state requiring travel and services outside this state, shall  
17 be made by the commissioner or by examiners designated by the  
18 commissioner and shall be at the expense of the person examined; but a  
19 domestic insurer shall not be liable for the compensation of examiners  
20 employed by the commissioner for such services outside this state.

21 (c) When making a market conduct examination under this chapter,  
22 the commissioner may contract, in accordance with applicable state  
23 contracting procedures, for qualified attorneys, appraisers,  
24 independent certified public accountants, contract actuaries, and other  
25 similar individuals who are independently practicing their professions,  
26 even though those persons may from time to time be similarly employed  
27 or retained by persons subject to examination under this chapter, as  
28 examiners as the commissioner deems necessary for the efficient conduct  
29 of a particular examination. The compensation and per diem allowances  
30 paid to such contract persons shall be reasonable in the market and  
31 time incurred, shall not exceed one hundred twenty-five percent of the  
32 compensation and per diem allowances for examiners set forth in the  
33 guidelines adopted by the national association of insurance  
34 commissioners, unless the commissioner demonstrates that one hundred  
35 twenty-five percent is inadequate under the circumstances of the  
36 examination, and subject to the provisions of (a) of this subsection.

37 (d)(i) The person examined and liable shall reimburse the state  
38 upon presentation of an itemized statement thereof, for the actual

1 travel expenses of the commissioner's examiners, their reasonable  
2 living expenses allowance, and their per diem compensation, including  
3 salary and the employer's cost of employee benefits, at a reasonable  
4 rate approved by the commissioner, incurred on account of the  
5 examination. Per diem, salary, and expenses for employees examining  
6 insurers domiciled outside the state of Washington shall be established  
7 by the commissioner on the basis of the national association of  
8 insurance commissioner's recommended salary and expense schedule for  
9 zone examiners, or the salary schedule established by the human  
10 resources director and the expense schedule established by the office  
11 of financial management, whichever is higher. A domestic title insurer  
12 shall pay the examination expense and costs to the commissioner as  
13 itemized and billed by the commissioner.

14 (ii) The commissioner or the commissioner's examiners shall not  
15 receive or accept any additional emolument on account of any  
16 examination.

17 (iii) Market conduct examination fees subject to being reimbursed  
18 by an insurer shall be itemized and bills shall be provided to the  
19 insurer on a monthly basis for review prior to submission for payment,  
20 or as otherwise provided by state law.

21 (e) Nothing contained in this chapter limits the commissioner's  
22 authority to terminate or suspend any examination in order to pursue  
23 other legal or regulatory action under the insurance laws of this  
24 state. Findings of fact and conclusions made pursuant to any  
25 examination are prima facie evidence in any legal or regulatory action.

26 (f) The commissioner shall maintain active management and oversight  
27 of market conduct examination costs, including costs associated with  
28 the commissioner's own examiners, and with retaining qualified contract  
29 examiners necessary to perform an examination. Any agreement with a  
30 contract examiner shall:

31 (i) Clearly identify the types of functions to be subject to  
32 outsourcing;

33 (ii) Provide specific timelines for completion of the outsourced  
34 review;

35 (iii) Require disclosure to the insurer of contract examiners'  
36 recommendations;

37 (iv) Establish and use a dispute resolution or arbitration

1 mechanism to resolve conflicts with insurers regarding examination  
2 fees; and

3 (v) Require disclosure of the terms of the contracts with the  
4 outside consultants that will be used, specifically the fees and/or  
5 hourly rates that can be charged.

6 (g) The commissioner, or the commissioner's designee, shall review  
7 and affirmatively endorse detailed billings from the qualified contract  
8 examiner before the detailed billings are sent to the insurer.

9 **Sec. 5.** RCW 70.148.060 and 2005 c 274 s 341 are each amended to  
10 read as follows:

11 (1) All (~~examination and proprietary reports and~~) information  
12 except for proprietary reports or information obtained by the director  
13 and the director's staff in soliciting bids from insurers and in  
14 monitoring the insurer selected by the director shall (~~not~~) be made  
15 public or otherwise disclosed to any person, firm, corporation, agency,  
16 association, governmental body, or other entity.

17 (2) Subsection (1) of this section notwithstanding, the director  
18 may furnish all or part of examination reports prepared by the director  
19 or by any person, firm, corporation, association, or other entity  
20 preparing the reports on behalf of the director to:

21 (a) The Washington state insurance commissioner;

22 (b) A person or organization officially connected with the insurer  
23 as officer, director, attorney, auditor, or independent attorney or  
24 independent auditor; and

25 (c) The attorney general in his or her role as legal advisor to the  
26 director.

27 (3) Subsection (1) of this section notwithstanding, the director  
28 may furnish all or part of the examination or proprietary reports or  
29 information obtained by the director to:

30 (a) The Washington state insurance commissioner; and

31 (b) A person, firm, corporation, association, governmental body, or  
32 other entity with whom the director has contracted for services  
33 necessary to perform his or her official duties.

34 (4) (~~Examination reports and~~) Proprietary information obtained by  
35 the director and the director's staff (~~are~~) is not subject to public  
36 disclosure under chapter 42.56 RCW.

1           (5) A person who violates any provision of this section is guilty  
2 of a gross misdemeanor.

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