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**SUBSTITUTE HOUSE BILL 2207**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Consumer Protection & Business (originally sponsored by Representative Walen; by request of Insurance Commissioner)

AN ACT Relating to the group-wide supervision of internationally active insurance groups; amending RCW 48.31B.005, 48.31B.038, and 42.56.400; and adding a new section to chapter 48.31B RCW.

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

**Sec.**  RCW 48.31B.005 and 2015 c 122 s 1 are each amended to read as follows:

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

(1) "Affiliate" means an affiliate of, or person affiliated with, a specific person, and includes a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

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

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in a manner similar to that provided by RCW 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in RCW 48.05.440 or 48.43.310 or would cause the insurer to be in hazardous financial condition as defined in WAC 284-16-310.

(5) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under section 3 of this act to have sufficient contacts with the internationally active insurance group.

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

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

((~~(7)~~)) (8) "Internationally active insurance group" means an insurance holding company system that:

(a) Includes an insurer registered under RCW 48.31B.025; and

(b) Meets the following criteria:

(i) Premiums written in at least three countries;

(ii) The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's total gross written premiums; and

(iii) Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars.

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

((~~(8)~~)) (10) "Securityholder" means a securityholder of a specified person who owns any security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

((~~(9)~~)) (11) "Subsidiary" means a subsidiary of a specified person who is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

((~~(10)~~)) (12) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

**Sec.**  RCW 48.31B.038 and 2015 c 122 s 9 are each amended to read as follows:

(1) Documents, materials, or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RCW 48.31B.035 and all information reported ((~~pursuant to~~)) or provided to the commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, ((~~and~~)) 48.31B.030, and section 3 of this act are confidential by law and privileged, are not subject to chapter 42.56 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public is served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter is permitted or may be required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

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

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in RCW 48.31B.037, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(b) Notwithstanding (a) of this subsection, may only share confidential and privileged documents, material, or information reported pursuant to RCW 48.31B.025(12) with commissioners of states having statutes or rules substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information;

(c) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

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

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal, or international regulators;

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

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

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

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 48.31B RCW to read as follows:

(1) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group under this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(a) Does not have substantial insurance operations in the United States;

(b) Has substantial insurance operations in the United States, but not in this state; or

(c) Has substantial insurance operations in the United States and this state, but the commissioner has determined under the factors set forth in subsections (2) and (6) of this section that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor under this section.

(2) In cooperation with other state, federal, and international regulatory agencies, the commissioner must identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(a) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities;

(b) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(c) The location of the executive offices or largest operational offices of the internationally active insurance group;

(d) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(i) Substantially similar to the system of regulation provided under the laws of this state; or

(ii) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(e) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor must be made after consideration of the factors listed in (a) through (e) of this subsection, and must be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(3) When another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(a) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or

(b) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for the internationally active insurance group under subsection (2) of this section.

(4) Under RCW 48.31B.035 the commissioner is authorized to collect from any insurer registered under RCW 48.31B.025 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered under RCW 48.31B.025 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group has no less than thirty days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the Washington State Register and on the commissioner's web site the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(5) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the internationally active insurance group to ensure that:

(i) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(ii) Reasonable and effective mitigation measures are in place;

(b) Request from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(i) Governance, risk assessment, and management;

(ii) Capital adequacy; and

(iii) Material intercompany transactions;

(c) Coordinate and, through the authority of the regulatory officials of the jurisdiction where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance;

(d) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of RCW 48.31B.038, through supervisory colleges as set forth in RCW 48.31B.037 or otherwise;

(e) Enter into agreements with or obtain documents from any insurer registered under RCW 48.31B.025, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. The agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(f) Other group-wide supervision activities, consistent with the authorities and purposes of this subsection (5), as considered necessary by the commissioner.

(6) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the national association of insurance commissioners is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor. However:

(a) The commissioner's cooperation must be in compliance with the laws of this state; and

(b) The regulatory official acknowledged as the group-wide supervisor must also recognize and cooperate with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where the recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

(7) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under RCW 48.31B.025, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(8) The commissioner may adopt rules necessary for the implementation and administration of this section.

(9) A registered insurer subject to this section is liable for and must pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, and other professionals and all reasonable travel expenses.

**Sec.**  RCW 42.56.400 and 2019 c 389 s 102 are each amended to read as follows:

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

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

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

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

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

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

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

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

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

(9) Documents, materials, or information obtained or provided by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, ((~~and~~)) 48.31B.035, and section 3 of this act, all of which are confidential and privileged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) Data, information, and documents((~~, other than those described in RCW 48.02.210(2) as it existed prior to repeal by section 2, chapter 7, Laws of 2017 3rd sp. sess.,~~)) that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 ((~~as it existed on January 1, 2017, and RCW 48.02.210 as it existed prior to repeal by section 2, chapter 7, Laws of 2017 3rd sp. sess.~~));

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

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

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065;

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068;

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230;

(28) Documents, materials, or other information, including the corporate annual disclosure obtained by the insurance commissioner under RCW 48.195.020;

(29) Findings and orders disapproving acquisition of a trust institution under RCW 30B.53.100(3); and

(30) All claims data, including health care and financial related data received under RCW 41.05.890, received and held by the health care authority.

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