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**SENATE BILL 6027**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senators Stanford, Kuderer, and Nobles; by request of Insurance Commissioner

AN ACT Relating to the insurer holding company act; and amending RCW 48.31B.005, 48.31B.025, and 48.31B.038.

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

**Sec.**  RCW 48.31B.005 and 2020 c 243 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 capital calculation instructions" means the group capital calculation instructions as adopted by the national association of insurance commissioners and as amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.

(6) "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 RCW 48.31B.036 to have sufficient contacts with the internationally active insurance group.

((~~(6)~~)) (7) "Insurance holding company system" means a system that consists of two or more affiliated persons, one or more of which is an insurer.

((~~(7)~~)) (8) "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.

((~~(8)~~)) (9) "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)~~)) (10) "National association of insurance commissioners liquidity stress test framework" means a separate national association of insurance commissioners publication which includes a history of the national association of insurance commissioners' development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, such scope criteria, instructions, and reporting template being as adopted by the national association of insurance commissioners and as amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.

(11) "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.

((~~(10)~~)) (12) "Scope criteria" means the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the national association of insurance commissioners liquidity stress test framework for that data year.

(13) "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.

((~~(11)~~)) (14) "Subsidiary" means a subsidiary of a specified person who is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

((~~(12)~~)) (15) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

**Sec.**  RCW 48.31B.025 and 2015 c 122 s 5 are each amended to read as follows:

(1) Every insurer that is authorized to do business in this state and is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

(a) This section;

(b) RCW 48.31B.030 (1)(a), (2), and (3); and

(c) Either RCW 48.31B.030(1)(b) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by May 1st of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state that is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement on a form and in a format prescribed by the national association of insurance commissioners, containing the following current information:

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

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

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

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

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

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

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

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

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

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

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

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

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

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

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

(4) No information need be disclosed on the registration statement filed under subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31st next preceding are not deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the group capital calculation or the liquidity stress test framework.

(5) Subject to RCW 48.31B.030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days after their declaration.

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

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

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

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

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

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

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

(13)(a) The ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the national association of insurance commissioners group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the financial analysis handbook adopted by the national association of insurance commissioners. Insurance holding company systems described below are exempt from filing the group capital calculation:

(i) An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and assumes no business from any other insurer;

(ii) An insurance holding company system that is required to perform a group capital calculation specified by the United States federal reserve board. The lead state commissioner shall request the calculation from the federal reserve board under the terms of information sharing agreements in effect. If the federal reserve board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(iii) An insurance holding company system whose non-United States group-wide supervisor is located within a reciprocal jurisdiction as described in RCW 48.12.462 that recognizes the United States state regulatory approach to group supervision and group capital;

(iv) An insurance holding company system:

(A) That provides information to the lead state that meets the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the national association of insurance commissioners group supervision approach, as detailed in the national association of insurance commissioners financial analysis handbook; and

(B) Whose non-United States group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in rule, the group capital calculation as the worldwide group capital assessment for United States insurance groups who operate in that jurisdiction.

(b) Notwithstanding the provisions of (a)(iii) and (iv) of this subsection, the lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(c) Notwithstanding the exemptions from filing the group capital calculation stated in (a) of this subsection, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

(d) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.

(14) The ultimate controlling person of every insurer subject to registration and also scoped into the national association of insurance commissioners liquidity stress test framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

(a) The national association of insurance commissioners liquidity stress test framework must include scope criteria applicable to a specific data year. These scope criteria must be reviewed at least annually by the financial stability task force or its successor. Any change to the national association of insurance commissioners liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1st of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the national association of insurance commissioners liquidity stress test framework for the specified data year unless the lead state commissioner, in consultation with the national association of insurance commissioners financial stability task force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the national association of insurance commissioners liquidity stress test framework for the specified data year, unless the lead state commissioner, in consultation with the national association of insurance commissioners financial stability task force or its successor, determines the insurer should be scoped into the framework for that data year.

(b) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the national association of insurance commissioners liquidity stress test framework's instructions and reporting templates for that year and any lead state commissioner determinations, in consultation with the financial stability task force or its successor, provided within the framework.

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

**Sec.**  RCW 48.31B.038 and 2020 c 243 s 2 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 or provided to the commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, and 48.31B.036 are recognized by this state as being proprietary and to contain trade secrets, and 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.

(a) For purposes of the information reported and provided to the commissioner pursuant to RCW 48.31B.025(13), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the federal reserve board or any United States group-wide supervisor.

(b) For purposes of the information reported and provided to the commissioner pursuant to RCW 48.31B.025(14), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-United States group-wide supervisors.

(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, including proprietary and trade secret documents and materials, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners ((~~and its affiliates and subsidiaries~~)), with any third-party consultants designated by the commissioner, 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, including proprietary and trade secret information, from the national association of insurance commissioners ((~~and its affiliates and subsidiaries~~)) or a third-party consultant designated by the commissioner, 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 and any third-party consultant designated by the commissioner 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~~)) or a third-party consultant designated by the commissioner pursuant to this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal, or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(ii) Specify that ownership of information shared with the national association of insurance commissioners ((~~and its affiliates and subsidiaries~~)) or a third-party consultant designated by the commissioner pursuant to this chapter remains with the commissioner and the national association of insurance commissioners' or third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) Excluding documents, materials, or other information reported pursuant to RCW 48.31B.025(14), prohibit the national association of insurance commissioners or third-party consultant designated by the commissioner from storing the information shared pursuant to this act in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the national association of insurance commissioners or a third-party consultant designated by the commissioner pursuant to this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant designated by the commissioner for disclosure or production; ((~~and~~

~~(iv)~~)) (v) Require the national association of insurance commissioners ((~~and its affiliates and subsidiaries~~)) or a third-party consultant designated by the commissioner 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~~)) or third-party consultant designated by the commissioner may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners ((~~and its affiliates and subsidiaries~~)) or a third-party consultant designated by the commissioner pursuant to this chapter; and

(vi) For documents, materials, or other information reporting pursuant to RCW 48.31B.025(14), in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurer.

(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 or a third-party consultant designated by the commissioner 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.

(7) The group capital calculation and resulting group capital ratio required under RCW 48.31B.025(13) and the liquidity stress test along with its results and supporting disclosures required under RCW 48.318.025(14) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this act, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

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