

SENATE BILL REPORT

SB 5806

As Reported by Senate Committee On:
Business, Financial Services, Gaming & Trade, January 23, 2024

Title: An act relating to the confidentiality of insurance company data.

Brief Description: Concerning the confidentiality of insurance company data.

Sponsors: Senators Kuderer, Hunt, Dhingra, Hasegawa and Nobles.

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/16/24, 1/23/24 [DPS].

Brief Summary of First Substitute Bill

- Excludes from public disclosure under the public records act certain information pertaining to emergencies and hazard mitigation received by the Office of the Insurance Commissioner (OIC) from insurance entities or the federal government.
- Allows state agencies to receive confidential and privileged information from the OIC if confidentiality is maintained.
- Establishes that the OIC may prepare and publish reports using certain data from P&C companies if the data is in aggregate.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Majority Report: That Substitute Senate Bill No. 5806 be substituted therefor, and the substitute bill do pass.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member; Boehnke, Gildon, Hasegawa, Lovick, MacEwen and Mullet.

Staff: Kellee Gunn (786-7429)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: The Public Records Act and Office of the Insurance Commissioner. The Public Records Act (PRA) requires state agencies to make records available to the public unless the records are explicitly exempted from disclosure or are otherwise made confidential in statute.

Under state law, information the Office of the Insurance Commissioner (OIC) obtains from an insurer during financial or market conduct examination is exempt from PRA disclosure.

Permissible Disclosures of Confidential Information and Documents by the Office of the Insurance Commissioner. The OIC may:

- share and receive confidential and privileged documents with the National Association of Insurance Commissioners and its affiliates, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities if confidentiality is maintained; and
- enter into agreements governing the sharing and use of the information.

No waiver of an existing claim of confidentiality or privilege may occur due to sharing of this information or permissible disclosures.

Agency Action Exception to Public Records Act Exemption. Unless cited in connection with an agency action, working papers, documents, and materials produced by, obtained by, or disclosed to the OIC during a financial or market conduct examination—confidential and privileged documents, or desk audit, are exempt from disclosure.

Parties involved must be notified within five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington State superior court to prevent disclosure it believes is confidential or privileged.

An agency action includes acts related to licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits. It does not include certain decisions by an agency related to contracting and procurement, disputes related to collective bargaining, property transactions, or granting of a license or trademark.

Summary of Bill (First Substitute): Additional Exemptions from the Public Records Act. In addition to confidential and privileged documents already exempt from public disclosure under the PRA, the following are also exempt:

- certain documents, materials, or information provided to the OIC by the federal government related to emergency management, hazard mitigation, and the National Flood Insurance Program; and
- data requested by the OIC from property and casualty (P&C) entities for the purpose of understanding and studying insurance market conditions outside of the context of market conduct action.

Use of Data in Aggregate. OIC may prepare and publish reports, analysis, or other documents using data received from individual P&C companies if the data is in aggregate form. Data in the aggregate form is considered open records available for public inspection.

Permissible Disclosure of Confidential and Privileged Information by the Office of the Insurance Commissioner. State agencies are added as entities who may receive confidential and privileged documents, materials, and information from the OIC if confidentiality is maintained.

EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES, GAMING & TRADE COMMITTEE (First Substitute):

- Strikes language allowing for data for the purpose of understanding and studying insurance market conditions outside the context of a market conduct action to be made public in the instance of an agency action.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is going to help OIC in their regulatory and oversight functions. This allows other state agencies to have access to information needed during or after a state emergency, such as DNR. The first person I reached out to this about this idea was Roland Thompson, and they do not have a concern about this. The authority by OIC already exists regarding data, and the exception to the PRA exemption, regarding an agency action, is already permissible in statute. The new language is a targeted exemption, which allows data to be public in only very certain instances. OIC has the vital duty to study the insurance market and should not have to worry about any issues related to that. This bill would assist insurance companies in protecting proprietary information. OIC already has the ability of collecting this information under RCW 48.02 and RCW 48.37. Wildfire risk underwriting is changing. It is common for states to do post disaster data calls, and this helps policy makers understand market issues around the emergency.

OTHER: There have been discussions for many years about protecting this proprietary information. There is a clause in Subsection 8 that we are concerned over. It says that data will be protected unless cited under an agency action. This covers everything that the agency does. That information is protected and proprietary and needs to be kept confidential. Subsection 8 undoes everything. - There is distinction that needs to be made

between the current law allowing for market conduct examination and the reference in Subsection 8 on studying market condition outside the market conduct action. To have a data call regarding anything, and then have that open to public disclosure, could allow for anything to be disclosed. Please strike the APA/PRA part of this section or amend it. We need to keep this proprietary information confidential.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; David Forte, Office of the Insurance Commissioner .

OTHER: Jean Leonard, WA Insurers; Kris Tefft, American Property Casualty Insurance Association (APCIA); Kenton Brine, NW Insurance Council.

Persons Signed In To Testify But Not Testifying: No one.