

Chapter 48.31B RCW
INSURER HOLDING COMPANY ACT

Sections

- 48.31B.005 Definitions.
- 48.31B.010 Domestic insurer may acquire subsidiaries—Authorized investments—Insurer ceases to control subsidiary—Disposal of investment.
- 48.31B.015 Control of insurer—Acquisition, merger, or exchange—Preacquisition notification—Divestment of controlling interest—Jurisdiction of courts.
- 48.31B.020 Acquisition of insurer—Change in control—Definitions—Exemptions—Competition—Preacquisition notification—Violations—Penalties.
- 48.31B.025 Registration with commissioner—Information required—Rule making—Disclaimer of affiliation—Annual enterprise risk report—Failure to file.
- 48.31B.030 Insurer subject to registration—Standards for transactions within a holding company system—Extraordinary dividends or distributions—Insurer's surplus—Officers and directors.
- 48.31B.035 Examination of insurers—Commissioner may order production of information—Failure to comply—Costs of examination.
- 48.31B.036 Internationally active insurance groups—Group-wide supervision—Commissioner's authority and duties—Costs.
- 48.31B.037 Commissioner may participate in a supervisory college—Purposes—Costs.
- 48.31B.038 Confidentiality of certain documents, materials, or other information—Permitted uses.
- 48.31B.040 Rule making.
- 48.31B.045 Violations of chapter—Commissioner may seek superior court order.
- 48.31B.050 Violations of chapter—Fines—Civil forfeitures—Orders—Referral to prosecuting attorney—Imprisonment—Orders of supervision.
- 48.31B.055 Violations of chapter—Impairment of financial condition—Commissioner may take possession.
- 48.31B.060 Order for liquidation or rehabilitation—Recovery of distributions or payments—Personal liability—Maximum amount recoverable.
- 48.31B.065 Violations of chapter—Contrary to interests of policyholders or the public—Suspension, revocation, or nonrenewal of license.
- 48.31B.070 Person aggrieved by actions of commissioner.
- 48.31B.900 Short title.
- 48.31B.901 Severability—1993 c 462.
- 48.31B.902 Implementation—1993 c 462.

RCW 48.31B.005 Definitions. 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 RCW 48.31B.036 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.

(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.

(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.

(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.

(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.

(12) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security. [2020 c 243 § 1; 2015 c 122 § 1; 1993 c 462 § 2.]

Effective dates—2015 c 122: "Except for section 14 of this act, which takes effect July 1, 2017, this act takes effect January 1, 2016." [2015 c 122 § 23.]

RCW 48.31B.010 Domestic insurer may acquire subsidiaries—Authorized investments—Insurer ceases to control subsidiary—Disposal of investment. (1) A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so is not limited by reason of the fact that they are subsidiaries of a domestic insurer.

(2) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this title, a domestic insurer may also:

(a) Invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of the insurer's assets or fifty percent of the insurer's surplus as regards policyholders, provided that, after such investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries, health maintenance organizations, and health care service contractors are excluded, and there is included:

(i) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary,

including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities;

(ii) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and

(iii) All contributions to the capital and surplus of a subsidiary subsequent to its acquisition or formation;

(b) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in (a) of this subsection or chapter 48.13 RCW applicable to the insurer. For the purpose of this subsection, the total investment of the insurer includes:

(i) Any direct investment by the insurer in an asset;

(ii) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which is calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary; and

(iii) With the approval of the commissioner, any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Investments in common stock, preferred stock, debt obligations, or other securities made according to subsection (2) of this section are not subject to any of the otherwise applicable restrictions or prohibitions contained in this title applicable to such investments of insurers.

(4) Whether any investment made according to subsection (2) of this section meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, net including dividends.

(5) If an insurer ceases to control a subsidiary, it shall dispose of any investment in that subsidiary within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment was made, the investment met the requirements for investment under any other section of this title, and the insurer has notified the commissioner thereof. [2015 c 122 § 2; 1993 c 462 § 3.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.015 Control of insurer—Acquisition, merger, or exchange—Preacquisition notification—Divestment of controlling interest—Jurisdiction of courts. (1) (a) No person other than the issuer may make a tender offer for or a request or invitation for

tenders of, or enter into any agreement to exchange securities of, seek to acquire, or acquire, in the open market or otherwise, voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of a right to acquire, be in control of the insurer and no person may enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner as prescribed in this chapter.

(b) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, must file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The commissioner determines whether the person or persons seeking to divest or acquire a controlling interest in an insurer must file and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that the confidential treatment interferes with the enforcement of this section. If the statement referred to in (a) of this subsection is otherwise filed, this subsection does not apply.

(c) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which must contain the information set forth in RCW 48.31B.020(3)(a). A failure to file the notification may be subject to penalties specified in RCW 48.31B.020(5)(c).

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

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

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

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

(ii) If that person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or

executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection;

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

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

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

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

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

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

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

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

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

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

(l) An agreement by the person required to file the statement referred to in subsection (1) of this section that it will provide the annual report, specified in RCW 48.31B.025(12), for so long as control exists;

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

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

(o) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by (a) through (n) of this subsection must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member. If any partner, member, or person is a corporation or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by (a) through (n) of this subsection must be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation;

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

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

(4) (a) The commissioner shall approve a merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing thereon, he or she finds that:

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

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

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

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

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

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

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

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

(b) The public hearing referred to in (a) of this subsection must be held within thirty days after the statement required by subsection (1) of this section is filed, and at least twenty days' notice must be given by the commissioner to the person filing the statement. Not less than seven days' notice of the public hearing must be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner must make a determination within the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of the hearing was sent, and any other person whose interest may be affected has the right to present evidence, examine, and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner as is presently allowed in the superior court of this state. All discovery proceedings must be concluded not later than three days prior to the commencement of the public hearing.

(c) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in (b) of this subsection may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of this section. Such person shall file the statement referred to in subsection (1) of this section with the national association of insurance commissioners within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt out within ten days of the receipt of the statement referred to in subsection (1) of this section. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person, or by telecommunication.

(d) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the

capital of the insurer to the level required by the laws and rules of this state shall be made not later than sixty days after the date of notification of the change in control submitted pursuant to subsection (1) (a) of this section.

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

(5) This section does not apply to:

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

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

(6) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

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

(7) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving that person arising out of violations of this section, and each such person is deemed to have performed acts equivalent to and constituting an appointment by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all lawful process must be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address. [2015 c 122 § 3; 1993 c 462 § 4.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.020 Acquisition of insurer—Change in control—Definitions—Exemptions—Competition—Preacquisition notification—Violations—Penalties. (1) The following definitions apply for the purposes of this section only:

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

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

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

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

(i) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under RCW 48.31B.005(3), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(ii) The acquisition of a person by another person when neither person is directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subsection (3)(a) of this section thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this subsection (2)(b);

(iii) The acquisition of already affiliated persons;

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

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

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

(C) In no market would the:

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

(II) Market share increase by more than two percent of the total market.

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

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

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

(3) An acquisition covered by subsection (2) of this section may be subject to an order under subsection (5) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner must give confidential treatment to information submitted under this subsection (3) in the same manner as provided in RCW 48.31B.038.

(a) The preacquisition notification must be in such form and contain such information as prescribed by the national association of insurance commissioners relating to those markets that, under subsection (2)(b)(iv) of this section, cause the acquisition not to be exempted from this section. The commissioner may require such additional material and information as he or she deems necessary to determine whether the proposed acquisition, if consummated, would

violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating his or her ability to render an informed opinion.

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

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

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

(i) An acquisition covered under subsection (2) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

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

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more; or

(B) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

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

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

(ii) There is a significant trend toward increased concentration when the aggregate market share of a grouping of the largest insurers

in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from a base year five to ten years before the acquisition up to the time of the acquisition. An acquisition or merger covered under subsection (2) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in (a) of this subsection if:

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

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

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

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

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

(B) "Market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, adopted by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

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

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

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

(i) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or

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

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

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

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

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

(A) There is a hearing;

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

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

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

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

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

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

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

(iii) Both (b)(i) and (ii) of this subsection.

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

(6) RCW 48.31B.045 (2) and (3) and 48.31B.055 do not apply to acquisitions covered under subsection (2) of this section. [2015 c 122 § 4; 1993 c 462 § 5.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.025 Registration with commissioner—Information required—Rule making—Disclaimer of affiliation—Annual enterprise risk report—Failure to file. (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.

(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) 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. [2015 c 122 § 5; 2000 c 214 § 1; 1993 c 462 § 6.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.030 Insurer subject to registration—Standards for transactions within a holding company system—Extraordinary dividends or distributions—Insurer's surplus—Officers and directors. (1) (a)

Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

- (i) The terms must be fair and reasonable;
- (ii) Agreements for cost-sharing services and management must include such provisions as required by rule issued by the commissioner;
- (iii) Charges or fees for services performed must be fair and reasonable;
- (iv) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (v) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
- (vi) The insurer's surplus regarding policyholders following any dividends or distributions to shareholders or affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and a person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to the materiality standards contained in this subsection (1)(b), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications must include the reasons for the change and the financial impact on the domestic insurer. Informal notice must be reported, within thirty days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:

- (i) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed:
 - (A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders;
 - (B) With respect to life insurers, three percent of the insurer's admitted assets; each as of December 31st next preceding;
- (ii) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders;

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

(iii) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements;

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

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

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

(vi) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired according to RCW 48.31B.010 or authorized according to chapter 48.13 RCW, or in nonsubsidiary insurance affiliates that are subject to this chapter, are exempt from this requirement; and

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

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

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under RCW 48.31B.045.

(d) The commissioner, in reviewing transactions under (b) of this subsection, must consider whether the transactions comply with the standards set forth in (a) of this subsection and whether they may adversely affect the interests of policyholders.

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

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

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

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

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

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

(d) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

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

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

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

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

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

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

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

(g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

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

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

(j) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards

policyholders whenever in the judgment of the commissioner the investment so warrants.

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

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

(c) At least one-third of a domestic insurer's directors and at least one-third of the members of each committee of the insurer's board of directors must be persons who are not: (i) Officers or employees of the insurer or of any entity that controls, is controlled by, or is under common control with the insurer; or (ii) beneficial owners of a controlling interest in the voting securities of the insurer or of any such entity. A quorum for transacting business at a meeting of the insurer's board of directors or any committee of the board of directors must include at least one such person.

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

(e) The provisions of (c) and (d) of this subsection do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual holding company, or publicly held corporation, has a board of directors and committees thereof that meet the requirements of (c) and (d) of this subsection with respect to such controlling entity.

(f) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, is less than three hundred million dollars. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity. [2015 c 122 § 6; 1993 c 462 § 7.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.035 Examination of insurers—Commissioner may order production of information—Failure to comply—Costs of examination.

(1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under chapter 48.03 RCW relating to the examination of insurers, the commissioner has the power to examine any insurer registered under RCW 48.31B.025 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(2) (a) The commissioner may order any insurer registered under RCW 48.31B.025 to produce such records, books, papers, or other information in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this title.

(b) To determine compliance with this title, the commissioner may order any insurer registered under RCW 48.31B.025 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a fine of ten thousand dollars for each day's delay, or may suspend or revoke the insurer's license. The commissioner shall transfer the fine collected under this section to the state treasurer for deposit into the general fund.

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

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

(5) In the event the insurer fails to comply with an order, the commissioner has the power to examine the affiliates to obtain the information. The commissioner also has the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. Every person is required to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. Every person is entitled to the same fees and mileage, if claimed, as a witness as provided in RCW 48.03.070. The fees, mileage, and other actual expenses, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, must be itemized and charged against, and be paid by, the company being examined. [2015 c 122 § 7; 1993 c 462 § 8.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.036 Internationally active insurance groups—Group-wide supervision—Commissioner's authority and duties—Costs. (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 website 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. [2020 c 243 § 3.]

RCW 48.31B.037 Commissioner may participate in a supervisory college—Purposes—Costs. (1) With respect to any insurer registered under RCW 48.31B.025, and in accordance with subsection (3) of this

section, the commissioner has the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this title. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

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

(2) Each registered insurer subject to this section is liable for and must pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection

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

(3) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with RCW 48.31B.035, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with RCW 48.31B.038(3) providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. This section does not delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.
[2015 c 122 § 8.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.038 Confidentiality of certain documents, materials, or other information—Permitted uses. (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 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. [2020 c 243 § 2; 2015 c 122 § 9.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.040 Rule making. The commissioner may, in accordance with the administrative procedure act, chapter 34.05 RCW, adopt rules interpreting and implementing this chapter. [2015 c 122 § 10; 1993 c 462 § 9.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.045 Violations of chapter—Commissioner may seek superior court order. (1) Whenever it appears to the commissioner that an insurer or a director, officer, employee, or agent of the insurer has committed or is about to commit a violation of this chapter or any rule or order of the commissioner under this chapter, the commissioner may apply to the superior court for Thurston county or to the court for the county in which the principal office of the insurer is located for an order enjoining the insurer or the director, officer, employee, or agent from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(2) No security that is the subject of an agreement or arrangement regarding acquisition, or that is acquired or to be

acquired, in contravention of this chapter or of a rule or order of the commissioner under this chapter may be voted at a shareholders' meeting, or may be counted for quorum purposes. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that a security of the insurer has been or is about to be acquired in contravention of this chapter or of a rule or order of the commissioner under this chapter, the insurer or the commissioner may apply to the superior court for Thurston county or to the court for the county in which the insurer has its principal place of business to enjoin an offer, request, invitation, agreement, or acquisition made in contravention of RCW 48.31B.015 or a rule or order of the commissioner under that section to enjoin the voting of a security so acquired, to void a vote of the security already cast at a meeting of shareholders, and for such other relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a rule or order of the commissioner under this chapter, the superior court for Thurston county or the court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester voting securities of the insurer owned directly or indirectly by the person, and issue such order with respect to the securities as may be appropriate to carry out this chapter.

Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic insurers is in this state. [1993 c 462 § 10.]

RCW 48.31B.050 Violations of chapter—Fines—Civil forfeitures—Orders—Referral to prosecuting attorney—Imprisonment—Orders of supervision.

(1) The commissioner shall require, after notice and hearing, an insurer failing, without just cause, to file a registration statement as required in this chapter, to pay a fine of not more than ten thousand dollars per day. The maximum fine under this section is one million dollars. The commissioner may reduce the fine if the insurer demonstrates to the commissioner that the imposition of the fine would constitute a financial hardship to the insurer. The commissioner shall pay a fine collected under this section to the state treasurer for the account of the general fund.

(2) Every director or officer of an insurance holding company system who knowingly violates this chapter, or participates in, or assents to, or who knowingly permits an officer or agent of the insurer to engage in transactions or make investments that have not been properly reported or submitted under RCW 48.31B.025(1) or 48.31B.030(1)(b) or (2), or that violate this chapter, shall pay, in their individual capacity, a fine of not more than ten thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the fine, the commissioner shall take into account the appropriateness of the forfeiture with

respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that an insurer subject to this chapter or a director, officer, employee, or agent of the insurer has engaged in a transaction or entered into a contract that is subject to RCW 48.31B.030 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

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

(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement or false report or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, upon conviction thereof, shall be imprisoned for not more than three years or fined not more than ten thousand dollars or both. The officer, director, or employee upon whom the fine is imposed shall pay the fine in his or her individual capacity.

(6) Whenever it appears to the commissioner that any person has committed a violation of RCW 48.31B.015 and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with RCW 48.31.400. [2015 c 122 § 11; 1993 c 462 § 11.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.055 Violations of chapter—Impairment of financial condition—Commissioner may take possession. Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to take possession of the property of the domestic insurer and to conduct the business of the insurer. [1993 c 462 § 12.]

RCW 48.31B.060 Order for liquidation or rehabilitation—Recovery of distributions or payments—Personal liability—Maximum amount recoverable. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the

order may recover on behalf of the insurer: (a) From a parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or (b) a payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment under (a) or (b) of this subsection is made at any time during the one year before the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3), and (4) of this section.

(2) No such distribution is recoverable if it is shown that when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate when the distributions were paid is liable up to the amount of distributions or payments under subsection (1) of this section the person received. A person who controlled the insurer at the time the distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

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

(5) To the extent that a person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it under those provisions, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for a resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it. [1993 c 462 § 13.]

RCW 48.31B.065 Violations of chapter—Contrary to interests of policyholders or the public—Suspension, revocation, or nonrenewal of license. Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as he or she finds is required for the protection of policyholders or the public. Such a determination must be accompanied by specific findings of fact and conclusions of law. [1993 c 462 § 14.]

RCW 48.31B.070 Person aggrieved by actions of commissioner. (1) A person aggrieved by an act, determination, rule, order, or any other

action of the commissioner under this chapter may proceed in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition the commissioner under the procedure described in the administrative procedure act, chapter 34.05 RCW. [2015 c 122 § 12; 1993 c 462 § 15.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.

RCW 48.31B.900 Short title. This chapter may be known and cited as the Insurer Holding Company Act. [1993 c 462 § 1.]

RCW 48.31B.901 Severability—1993 c 462. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 462 § 112.]

RCW 48.31B.902 Implementation—1993 c 462. The insurance commissioner may take such steps as are necessary to ensure that this act is implemented on July 25, 1993. [1993 c 462 § 106.]