

HOUSE BILL REPORT

HB 1085

As Reported by House Committee On:

Financial Institutions & Insurance

Title: An act relating to providing confidentiality to certain insurance commissioner examinations.

Brief Description: Providing confidentiality to certain insurance commissioner examinations.

Sponsors: Representatives Schual-Berke, Benson and Simpson; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/22/03, 3/5/03 [DPS].

Brief Summary of Substitute Bill

- Exempts the Insurance Commissioner from the disclosure requirements of the Public Disclosure Act with respect to information obtained from an insurer or regulatory entity in the course of a financial or market conduct examination.
- Authorizes the Insurance Commissioner to publicly disclose information obtained from an insurer if the information results in official regulatory action.
- Creates administrative and legal procedures by which a citizen may gain access to information that would otherwise be confidential.
- Creates a legal procedure by which a person or entity can seek to maintain the confidentiality of information that might otherwise be subject to public disclosure.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Hunter, Roach and Santos.

Staff: Thamas Osborn (786-7129).

Background:

The Public Disclosure Act (Act) generally requires state agencies to make all documents available to the public unless specifically exempted by statute. However, as the result of legislation passed in 2001, the Insurance Commissioner (Commissioner) is exempted from the requirements of the Act with respect to certain categories of confidential information it obtains in the course of its official regulatory duties. This legislation was passed in response to federal laws prohibiting federal agencies from sharing information with a state unless the state has regulations ensuring that the information will remain confidential. With the passage of the 2001 legislation allowing confidentiality, the Commissioner is now able to share information with out-of-state regulators and obtain access to federal records.

The categories of confidential information protected from disclosure are as follows: 1) information received from the National Association of Insurance Commissioners; and 2) information received from federal, state, and international governmental agencies. Information obtained from these sources is protected from disclosure only to the extent that it is confidential and/or privileged under the laws of the jurisdiction from which it originated. The Commissioner may share confidential information among these sources, provided the recipient agrees to maintain the confidentiality of the information.

Such confidential information cannot be subject to subpoena, is not discoverable through court procedures, and is not admissible as evidence in any private civil action. Furthermore, neither the Commissioner nor his or her employees may be required to testify in any private civil action as to the substance of any of this confidential information.

The Commissioner may use and/or disclose the confidential information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

However, information obtained by the Commissioner in the course of his/her own investigation or examination of an insurer is not subject to these confidentiality requirements and must therefore be disclosed to the public under the Act. The Commissioner contends that this lack of confidentiality has caused other states and the federal government to be uncooperative in sharing information, and thus has hindered his ability to gather information from out-of-state sources that might be pertinent to the examination of a domestic insurer.

Summary of Substitute Bill:

Generally, information obtained from an insurer by the Commissioner in the course of conducting a financial or market conduct examination is exempt from the disclosure

requirements of the Public Disclosure Act. However, subject to certain conditions, such information must be publicly disclosed by the Commissioner in the event the information in question results in an official regulatory action.

The Commissioner is required to give a person/entity providing information related to a financial or market conduct examination five days notice before publicly disclosing such information in connection with an agency action. The notified party may seek injunctive relief to prevent any such disclosure.

Upon receipt of a public disclosure request for information related to a financial or market conduct examination, the Commissioner must disclose information received during the course of certain financial or market conduct examinations, unless: (1) the information is otherwise privileged or exempted from public disclosure; and (2) the public interest in disclosure is outweighed by the public interest in nondisclosure.

Any person may petition the Thurston County Superior Court (Court) to obtain information related to a financial or market conduct examination that is subject to the statutory exemption from public disclosure. The Court must privately review the information requested in the petition and « if the petitioner has demonstrated a good cause for doing so « the Court shall allow the petitioner to have access to the requested information. If the court allows such access to the petitioner, the petitioner must not disclose the information to any other person, absent a court order allowing such disclosure. After a formal court hearing, the Court must allow *public* disclosure of the information requested in the petition, provided the Court finds that there is a *public interest* sufficient to justify such disclosure.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- Defines "agency action" by reference to the Administrative Procedure Act.
- Requires the Commissioner to give a person/entity providing information related to a financial or market conduct examination with five days notice before publicly disclosing such information in connection with an agency action. The notified party may seek injunctive relief to prevent any such disclosure.
- Upon receipt of a public disclosure request for information related to a financial or market conduct examination, the Commissioner must disclose information received during the course of certain financial or market conduct examinations, unless: (1) the information is otherwise privileged or exempted from public disclosure; and (2) the public interest in disclosure is outweighed by the public interest in nondisclosure.
- Allows any person to petition the Thurston County Superior Court to obtain information related to a financial or market conduct examination that is subject to the statutory exemption from public disclosure. The Court must privately review the information requested in the petition and « if the petitioner has demonstrated a good

cause for doing so « the Court shall allow the petitioner to have access to the requested information. If the Court allows such access to the petitioner, the petitioner must not disclose the information to any other person, absent a court order allowing such disclosure. After a formal court hearing, the Court must allow *public* disclosure of the information requested in the petition, provided the Court finds that there is a *public interest* sufficient to justify such disclosure.

- The Act takes effect on January 1, 2004.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2004.

Testimony For: The current public disclosure requirements present problems for the Commissioner with respect to obtaining information from other states and the federal government, who are reluctant to share information that is subject to automatic disclosure. This legislation is needed so as to enable the Commissioner to share information with these other jurisdictions regarding the insurance industry. In order to better protect consumers, the Commissioner needs access to information from other jurisdictions with respect to financial and market conduct examinations.

(With concerns) This bill would deny public access to documents obtained from other states. It would also make it difficult for the public to examine the internal operations of the Office of the Insurance Commissioner. In the future, an unscrupulous Insurance Commissioner could hide behind the law proposed by this bill. This is too high a price to pay for the confidentiality requested by the Commissioner.

Testimony Against: None.

Testified: (In support) Representative Schual-Berke, prime sponsor; and Bill Daley, Office of the Insurance Commissioner.

(In support, with concerns) Larry Shannon, Washington State Trial Lawyers Association.

(With concerns) Rowland Thompson, Allied Daily Newspapers.