

# HOUSE BILL REPORT

## SHB 1035

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### As Passed House:

March 9, 2005

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

**Brief Description:** Providing confidentiality to certain insurance commissioner examinations.

**Sponsors:** By House Committee on State Government Operations & Accountability (originally sponsored by Representatives Kirby, Roach, Simpson and Schual-Berke; by request of Insurance Commissioner).

### Brief History:

#### Committee Activity:

State Government Operations & Accountability: 1/21/05, 1/28/05 [DPS];

Financial Institutions & Insurance: 2/16/05, 2/24/05 [DPS(SGOA)].

#### Floor Activity:

Passed House: 3/9/05, 96-0.

### Brief Summary of Substitute Bill

- Exempts from public records disclosure requirements information that is obtained by the Insurance Commissioner (Commissioner) from an insurer in the course of a financial or market conduct examination, subject to certain limitations and procedures.
- Authorizes the Commissioner to disclose such information if it is cited in connection with official agency action, subject to notice requirements, or if it relates to an examination undertaken regarding a change in control of certain insurers or health carriers.
- Authorizes a court action to disclose such information if it is connected to allegations of negligence or malfeasance by the Commissioner in the course of financial or market conduct examination.

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HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS &  
ACCOUNTABILITY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Miloscia, Schindler and Sump.

**Minority Report:** Without recommendation. Signed by 1 member: Representative McDermott.

**Staff:** James Allen (786-7114).

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## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill by Committee on State Government Operations & Accountability be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Santos, Schual-Berke, Serben, Simpson, Strow and Williams.

**Staff:** Jon Hedegard (786-7127).

### **Background:**

The Public Disclosure Act (Act) requires state agencies to make public records available to the public unless the records are specifically exempted from the disclosure requirements or are made confidential by another statute.

Under one such statute, certain documents provided to the Insurance Commissioner (Commissioner) may be confidential and exempt from public disclosure. Protected information includes information received from the National Association of Insurance Commissioners and 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.

### **Summary of Substitute Bill:**

In general, information the Insurance Commissioner obtains from an insurer in the course of a financial or market conduct examination is exempt from the disclosure requirements of the Public Disclosure Act. If, however, the Commissioner cites such records in connection with an official agency action, the records are subject to disclosure. In this case, the Commissioner must notify the entity that produced the records five business days before disclosure in connection with the agency action, and that entity may seek an injunction in any superior court in Washington to prevent disclosure.

If the Commissioner has obtained information in the course of a financial or market conduct examination that is exempt from disclosure, and that information is connected to allegations of negligence or malfeasance by the Commissioner related to a financial or market conduct

examination, then any person may petition any superior court in Washington for access to the information. In that case, the court must conduct an in-camera review after providing notice to the Commissioner and parties who provided information. The court may order the Commissioner to allow the petitioner access to the information; the petitioner must maintain its confidentiality. After conducting a hearing, the court may order disclosure of the information if the court finds that there is a public interest in disclosure and that exemption from disclosure is not necessary to protect any individual's right of privacy or any vital government function.

Information related to a financial or market conduct examination undertaken as a result of a proposed change in control or ownership of an insurer or health carrier shall be disclosed, unless: (1) the information is otherwise privileged or exempted from public disclosure; and (2) the Commissioner finds that the public interest in nondisclosure outweighs the public interest in disclosure.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (State Government Operations & Accountability) For background, examinations are done for consumer protection. There are two types of exams: financial and market conduct. Financial exams are a review of accuracy and completeness, with the results published. Among other results, market conduct exams make sure that marketing techniques are legal and that administrative procedures are in compliance with Washington law. The Office of the Insurance Commissioner has a couple of options: it can do the exams itself; or it can share the responsibility with other states. This bill will make it easier for Washington to join other states' efforts to conduct some examinations. The section that allows people to go to court if there are allegations of malfeasance or negligence by the Commissioner provides a remedy if people don't trust a future Insurance Commissioner. Insurers want to be forthcoming and helpful to the Commissioner in these examinations, but sometimes they have to be guarded with some of their information because it would become public under current law and would be available to the competition once transferred to the Office of the Insurance Commissioner; this currently is bad for the regulators and the regulated. Also, information provided to regulators under current law could invite litigation, so we need to prevent data mining as a way to generate litigation. Banking examination papers that are similar to these insurance documents are currently exempted under state law.

**Testimony With Suggestions:** There are great sums of money at stake and millions of people affected; the information covered under the bill is important to insurers and the insured. Line 15's mention of a "court of competent jurisdiction" could mean all courts in the United States and abroad, so this should be changed to Thurston County. On lines 27 and 28, the discussion of documents being "otherwise privileged or exempted from public disclosure" could also mean any state; some states don't allow the information out for any purpose. We don't have a

problem if you also want to change the current reference to Thurston County to any superior court in Washington; we just want Washington state law to be what is applicable.

**Testimony For:** (Financial Institutions & Insurance) This subject has been discussed for three years. All of the interested parties have worked together to resolve concerns. The Office of the Insurance Commissioner (OIC) conducts market conduct and financial examinations. Domestic insurers are examined at least once every five years. The examinations may be conducted with the National Association of Insurance Commissioners or with one or more other states. Joint examinations can lessen the cost and burden to insurers. This bill protects the working papers of the staff of the OIC related to examinations. Currently, other states do not want to conduct joint examinations with Washington because the Washington examiners' work papers are public records. The bill protects against possible malfeasance by the OIC. The protections given to insurance examination working papers are similar to the protections given to bank examination working papers. The bill protects insurers against possible liability. After three years, all concerns of interested parties are resolved.

**Testimony Against:** (State Government Operations & Accountability) None.

**Testimony Against:** (Financial Institutions & Insurance) None.

**Persons Testifying:** (State Government Operations & Accountability) (In support of original bill) Mary Clogston and Jim Odiorne; Office of the Insurance Commissioner; Melvin Sorensen, American Council of Life Insurers, Americas Health Insurance Plans and Property and Casualty Insurers Association of America; and Jean Leonard, State Farm Insurance Companies and Washington Insurers.

(With concerns to original bill) Rowland Thompson, Allied Daily Newspapers of Washington.

**Persons Testifying:** (Financial Institutions & Insurance) Mary Clogston, Office of the Insurance Commissioner; and Jean Leonard, State Farm Insurance.

**Persons Signed In To Testify But Not Testifying:** (State Government Operations & Accountability) None.

**Persons Signed In To Testify But Not Testifying:** (Financial Institutions & Insurance) None.