

# HOUSE BILL REPORT

## HB 1235

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### As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

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

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

**Sponsors:** Representatives Kirby and Roach; by request of Insurance Commissioner.

### Brief History:

#### Committee Activity:

Insurance, Financial Services & Consumer Protection: 1/23/07, 2/20/07 [DP].

#### Brief Summary of Bill

- Exempts from public records disclosure requirements information that is obtained by the Insurance Commissioner from an insurer in the course of financial analysis or market conduct desk audit, subject to certain limitations and procedures.

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## HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

**Majority Report:** Do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Rodne, Santos and Simpson.

**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.

In general, information the Insurance Commissioner (Commissioner) obtains from an insurer in the course of a financial or market conduct examination is exempt from the disclosure requirements of the Act.

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

Exception - Records Cited in an Official Agency Action

If the exempt records are cited by the Commissioner 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. The notified party may seek an injunction in any superior court in Washington to prevent disclosure.

Exception - Records Connected to Allegations of Official Negligence or Malfeasance

If exempt information obtained in the course of a financial or market conduct examination is connected to allegations of negligence or malfeasance by the Commissioner, 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.

Exception - Records Connected to Proposed Changes in Control or Ownership of Health Carriers

Information related to a financial or market conduct examination undertaken as a result of a proposed change in control or ownership of a nonprofit or mutual health insurer must 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.

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**Summary of Bill:**

Information produced by, obtained by, or disclosed to the Commissioner in the course of financial analysis or a market conduct desk audit is generally exempt from public disclosure requirements.

The specific exceptions for information obtained by the Commissioner in a financial or market conduct examination are applicable to the information obtained by the Commissioner in the course of financial analysis or a market conduct desk audit. This includes:

- records cited in an official agency action;
- records connected to allegations of official negligence or malfeasance; and
- records connected to proposed changes in control or ownership of a nonprofit or mutual health insurer.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) In 2005, the Legislature passed SB 5317 which provided confidentiality to certain working papers developed or obtained in a financial or market conduct examination. This addressed a problem the Office of Insurance Commission (OIC) faced in participating in zone exams with other states or the National Association of Insurance Commissioners (NAIC). Insurers prevented the OIC from being a member in those joint exams because the OIC could not protect information to the same degree as insurance departments in other states. Instead, the OIC had to do separate exams which added to the burden of the examined insurers. It also cost the OIC time and money. The 2005 bill was negotiated with stakeholders. Recently, the OIC became aware that changes were needed to align the law with NAIC accreditation standards. The language in the bill may require some additional clarification and the OIC will provide amendatory language.

(With concerns) I was part of the stakeholder group in 2005. I do have concerns about the bill. "Desk audit" is not a defined term in the insurance code. "Market analysis" and "financial analysis" are also not defined terms in the insurance code. These are broad terms and concepts that do not fit well with the Public Disclosure Act. These are terms of art that a court will find difficult to apply. Defined, narrow terms are easier for all parties to understand. "Financial analysis" or "market analysis" could mean anything contemplated or worked on by the OIC. I don't think that the OIC or this committee intends to protect every document received by the OIC. If these concepts can be defined, they should be defined. The Legislature should determine the scope of the exemptions from public disclosure. As drafted, the scope will eventually be determined by a judge.

(Opposed) None.

**Persons Testifying:** (In support) Jim Odiorne, Office of the Insurance Commissioner.

(With concerns) Rowland Thompson, Allied Daily News.

**Persons Signed In To Testify But Not Testifying:** None.