
ENGROSSED SUBSTITUTE HOUSE BILL 2842

State of Washington

61st Legislature

2010 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representatives Parker, Kirby, and Kenney; by request of Insurance Commissioner)

READ FIRST TIME 01/26/10.

1 AN ACT Relating to insurer receiverships; amending RCW 42.56.400;
2 adding a new section to chapter 48.31 RCW; and adding a new section to
3 chapter 48.99 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.31 RCW
6 to read as follows:

7 (1) Documents, materials, or other information that the
8 commissioner obtains under this chapter in the commissioner's capacity
9 as a receiver as defined in RCW 48.99.010(12), are records under the
10 jurisdiction and control of the receivership court. These records are
11 confidential by law and privileged, are not subject to chapter 42.56 or
12 40.14 RCW, and are not subject to subpoena directed to the commissioner
13 or any person who received documents, materials, or other information
14 while acting under the authority of the commissioner. The commissioner
15 is authorized to use such documents, materials, or other information in
16 the furtherance of any regulatory or legal action brought as a part of
17 the commissioner's official duties. The confidentiality and privilege
18 created by this section and RCW 42.56.400(17) is not waived if
19 confidential and privileged information under this section is shared

1 with any person acting under the authority of the commissioner,
2 representatives of insurance guaranty associations that may have
3 statutory obligations as a result of the insolvency of an insurer, the
4 national association of insurance commissioners and its affiliates and
5 subsidiaries, regulatory and law enforcement officials of other states
6 and nations, the federal government, and international authorities.

7 (2) Neither the commissioner nor any person who received documents,
8 materials, or other information while acting under the authority of the
9 commissioner as receiver is required to testify in any private civil
10 action concerning any confidential and privileged documents, materials,
11 or information subject to subsection (1) of this section.

12 (3) Any person who can demonstrate a legal interest in the
13 receivership estate or a reasonable suspicion of negligence or
14 malfeasance by the commissioner related to an insurer receivership may
15 file a motion in the receivership matter to allow inspection of private
16 company information or documents otherwise not subject to disclosure
17 under subsection (1) of this section. The court shall conduct an in-
18 camera review after notifying the commissioner and every party that
19 produced the information. The court may order the commissioner to
20 allow the petitioner to have access to the information provided the
21 petitioner maintains the confidentiality of the information. The
22 petitioner must not disclose the information to any other person,
23 except upon further order of the court. After conducting a hearing,
24 the court may order that the information can be disclosed publicly if
25 the court finds that there is a public interest in the disclosure of
26 the information and protection of the information from public
27 disclosure is clearly unnecessary to protect any individual's right of
28 privacy, or any company's proprietary information, and the commissioner
29 has not demonstrated that disclosure would impair any vital
30 governmental function, or the receiver's ability to manage the estate.

31 (4) The confidentiality and privilege of documents, materials, or
32 other information obtained by the receiver set forth in subsections (1)
33 and (2) of this section does not apply to litigation to which the
34 insurer in receivership is a party. In such instances, discovery is
35 governed by the Washington rules of civil procedure.

36 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.99 RCW
37 to read as follows:

1 (1) Documents, materials, or other information that the
2 commissioner obtains under this chapter in the commissioner's capacity
3 as a receiver, are records under the jurisdiction and control of the
4 receivership court. These records are confidential by law and
5 privileged, are not subject to chapter 42.56 or 40.14 RCW, and are not
6 subject to subpoena directed to the commissioner or any person who
7 received documents, materials, or other information while acting under
8 the authority of the commissioner. The commissioner is authorized to
9 use such documents, materials, or other information in the furtherance
10 of any regulatory or legal action brought as a part of the
11 commissioner's official duties. The confidentiality and privilege
12 created by this section and RCW 42.56.400(17) is not waived if
13 confidential and privileged information under this section is shared
14 with any person acting under the authority of the commissioner,
15 representatives of insurance guaranty associations that may have
16 statutory obligations as a result of the insolvency of an insurer, the
17 national association of insurance commissioners and its affiliates and
18 subsidiaries, regulatory and law enforcement officials of other states
19 and nations, the federal government, and international authorities.

20 (2) Neither the commissioner nor any person who received documents,
21 materials, or other information while acting under the authority of the
22 commissioner as receiver is required to testify in any private civil
23 action concerning any confidential and privileged documents, materials,
24 or information subject to subsection (1) of this section.

25 (3) Any person who can demonstrate a legal interest in the
26 receivership estate or a reasonable suspicion of negligence or
27 malfeasance by the commissioner related to an insurer receivership may
28 file a motion in the receivership matter to allow inspection of private
29 company information or documents not subject to public disclosure under
30 subsection (1) of this section. The court shall conduct an in-camera
31 review after notifying the commissioner and every party that produced
32 the information. The court may order the commissioner to allow the
33 petitioner to have access to the information, provided the petitioner
34 maintains the confidentiality of the information. The petitioner must
35 not disclose the information to any other person, except upon further
36 order of the court. After conducting a hearing, the court may order
37 that the information can be disclosed if the court finds that there is
38 a public interest in the disclosure of the information and the

1 protection of the information from public disclosure is clearly
2 unnecessary to protect any individual's right of privacy, or any
3 company's proprietary information, and the commissioner has not
4 demonstrated that the disclosure would impair any vital governmental
5 function, the receivership estate, or the receiver's ability to manage
6 the estate.

7 (4) The confidentiality and privilege of documents, materials or
8 other information obtained by the receiver set forth in subsections (1)
9 and (2) of this section does not apply to litigation to which the
10 insurer in receivership is a party. In such instances, discovery is
11 governed by the Washington rules of civil procedure.

12 **Sec. 3.** RCW 42.56.400 and 2009 c 104 s 23 are each amended to read
13 as follows:

14 The following information relating to insurance and financial
15 institutions is exempt from disclosure under this chapter:

16 (1) Records maintained by the board of industrial insurance appeals
17 that are related to appeals of crime victims' compensation claims filed
18 with the board under RCW 7.68.110;

19 (2) Information obtained and exempted or withheld from public
20 inspection by the health care authority under RCW 41.05.026, whether
21 retained by the authority, transferred to another state purchased
22 health care program by the authority, or transferred by the authority
23 to a technical review committee created to facilitate the development,
24 acquisition, or implementation of state purchased health care under
25 chapter 41.05 RCW;

26 (3) The names and individual identification data of either all
27 owners or all insureds, or both, received by the insurance commissioner
28 under chapter 48.102 RCW;

29 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

30 (5) Information provided under RCW 48.05.510 through 48.05.535,
31 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
32 through 48.46.625;

33 (6) Examination reports and information obtained by the department
34 of financial institutions from banks under RCW 30.04.075, from savings
35 banks under RCW 32.04.220, from savings and loan associations under RCW
36 33.04.110, from credit unions under RCW 31.12.565, from check cashers

1 and sellers under RCW 31.45.030(3), and from securities brokers and
2 investment advisers under RCW 21.20.100, all of which is confidential
3 and privileged information;

4 (7) Information provided to the insurance commissioner under RCW
5 48.110.040(3);

6 (8) Documents, materials, or information obtained by the insurance
7 commissioner under RCW 48.02.065, all of which are confidential and
8 privileged;

9 (9) Confidential proprietary and trade secret information provided
10 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
11 48.31C.070;

12 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
13 7.70.140 that, alone or in combination with any other data, may reveal
14 the identity of a claimant, health care provider, health care facility,
15 insuring entity, or self-insurer involved in a particular claim or a
16 collection of claims. For the purposes of this subsection:

17 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

18 (b) "Health care facility" has the same meaning as in RCW
19 48.140.010(6).

20 (c) "Health care provider" has the same meaning as in RCW
21 48.140.010(7).

22 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

23 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

24 (11) Documents, materials, or information obtained by the insurance
25 commissioner under RCW 48.135.060;

26 (12) Documents, materials, or information obtained by the insurance
27 commissioner under RCW 48.37.060;

28 (13) Confidential and privileged documents obtained or produced by
29 the insurance commissioner and identified in RCW 48.37.080;

30 (14) Documents, materials, or information obtained by the insurance
31 commissioner under RCW 48.37.140;

32 (15) Documents, materials, or information obtained by the insurance
33 commissioner under RCW 48.17.595; (~~and~~)

34 (16) Documents, materials, or information obtained by the insurance
35 commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);
36 and

37 (17) Documents, materials, or information obtained by the insurance
38 commissioner in the commissioner's capacity as receiver under sections

1 1 and 2 of this act, which are records under the jurisdiction and
2 control of the receivership court. The commissioner is not required to
3 search for, log, produce, or otherwise comply with the public records
4 act for any records that the commissioner obtains under chapters 48.31
5 and 48.99 RCW in the commissioner's capacity as a receiver, except as
6 directed by the receivership court.

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