

---

HOUSE BILL 2842

---

State of Washington

61st Legislature

2010 Regular Session

By Representatives Parker, Kirby, and Kenney; by request of Insurance Commissioner

Read first time 01/15/10. Referred to Committee on Financial Institutions & Insurance.

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) remain private company  
10 documents and are not public records, are confidential by law and  
11 privileged, are not subject to chapter 42.56 or 40.14 RCW, and are not  
12 subject to subpoena directed to the commissioner or any person who  
13 received documents, materials, or other information while acting under  
14 the authority of the commissioner. The commissioner is authorized to  
15 use such documents, materials, or other information in the furtherance  
16 of any regulatory or legal action brought as a part of the  
17 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, the  
2 national association of insurance commissioners and its affiliates and  
3 subsidiaries, regulatory and law enforcement officials of other states  
4 and nations, the federal government, and international authorities.

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

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

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

31 (1) Documents, materials, or other information that the  
32 commissioner obtains under this chapter in the commissioner's capacity  
33 as a receiver remain private company documents and are not public  
34 records, are confidential by law and privileged, are not subject to  
35 chapter 42.56 or 40.14 RCW, and are not subject to subpoena directed to  
36 the commissioner or any person who received documents, materials, or  
37 other information while acting under the authority of the commissioner.

1 The commissioner is authorized to use such documents, materials, or  
2 other information in the furtherance of any regulatory or legal action  
3 brought as a part of the commissioner's official duties. The  
4 confidentiality and privilege created by this section and RCW  
5 42.56.400(17) is not waived if confidential and privileged information  
6 under this section is shared with any person acting under the authority  
7 of the commissioner, the national association of insurance  
8 commissioners and its affiliates and subsidiaries, regulatory and law  
9 enforcement officials of other states and nations, the federal  
10 government, and international authorities.

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

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

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

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

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

6 (2) Information obtained and exempted or withheld from public  
7 inspection by the health care authority under RCW 41.05.026, whether  
8 retained by the authority, transferred to another state purchased  
9 health care program by the authority, or transferred by the authority  
10 to a technical review committee created to facilitate the development,  
11 acquisition, or implementation of state purchased health care under  
12 chapter 41.05 RCW;

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

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

17 (5) Information provided under RCW 48.05.510 through 48.05.535,  
18 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
19 through 48.46.625;

20 (6) Examination reports and information obtained by the department  
21 of financial institutions from banks under RCW 30.04.075, from savings  
22 banks under RCW 32.04.220, from savings and loan associations under RCW  
23 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
24 and sellers under RCW 31.45.030(3), and from securities brokers and  
25 investment advisers under RCW 21.20.100, all of which is confidential  
26 and privileged information;

27 (7) Information provided to the insurance commissioner under RCW  
28 48.110.040(3);

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

32 (9) Confidential proprietary and trade secret information provided  
33 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
34 48.31C.070;

35 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
36 7.70.140 that, alone or in combination with any other data, may reveal  
37 the identity of a claimant, health care provider, health care facility,

1 insuring entity, or self-insurer involved in a particular claim or a  
2 collection of claims. For the purposes of this subsection:

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

4 (b) "Health care facility" has the same meaning as in RCW  
5 48.140.010(6).

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

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

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

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

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

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

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

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

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

23 (17) Documents, materials, or information obtained by the insurance  
24 commissioner in the commissioner's capacity as receiver under sections  
25 1 and 2 of this act, all of which are not public records.

--- END ---