

SHB 2461 - S AMD 641

By Senators Hobbs, Angel, Benton, Mullet, Hatfield, Nelson, Fain

ADOPTED 03/07/2014

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 48.31B.005 and 1993 c 462 s 2 are each amended to  
4 read as follows:

5 ~~((As used in this chapter, the following terms have the meanings  
6 set forth in this section, unless the context requires otherwise.))~~ The  
7 definitions in this section apply throughout this chapter unless the  
8 context clearly requires otherwise.

9 (1) ~~((An))~~ "Affiliate" means an affiliate of, or person  
10 ~~((=))~~affiliated~~((=))~~ with, a specific person, ~~((is))~~ and includes a  
11 person ~~((who))~~ that directly, or indirectly through one or more  
12 intermediaries, controls, or is controlled by, or is under common  
13 control with, the person specified.

14 (2) ~~((The term))~~ "Commissioner" means the insurance commissioner,  
15 the commissioner's deputies, or the office of the insurance  
16 commissioner, as appropriate.

17 (3) "Control" means as follows:

18 (a) For a for-profit person, "control," including the terms "con-  
19 trolling," "controlled by," and "under common control with," means the  
20 possession, direct or indirect, of the power to direct or cause the  
21 direction of the management and policies of a person, whether through  
22 the ownership of voting securities, by contract other than a commercial  
23 contract for goods or nonmanagement services, or otherwise, unless the  
24 power is the result of an official position with or corporate office  
25 held by the person. Control is presumed to exist if ~~((a))~~ any person,  
26 directly or indirectly, owns, controls, holds with the power to vote,  
27 or holds proxies representing, ten percent or more of the voting  
28 securities of any other person. This presumption may be rebutted by a  
29 showing made in a manner similar to that provided by RCW 48.31B.025(11)  
30 that control does not exist in fact. The commissioner may determine,

1 after furnishing all persons in interest notice and opportunity to be  
2 heard and making specific findings of fact to support such  
3 determination, that control exists in fact, notwithstanding the absence  
4 of a presumption to that effect.

5 ~~((3) An)~~ (b) For a nonprofit corporation organized under chapters  
6 24.03 and 24.06 RCW, control exists if a person, directly or  
7 indirectly, owns, controls, holds with the power to vote, or holds  
8 proxies representing a majority of voting rights of the person or the  
9 power to elect or appoint a majority of the board of directors,  
10 trustees, or other governing body of the person, unless the power is  
11 the result of an official position of, or corporate office held by, the  
12 person; and

13 (c) Control includes either permanent or temporary control.

14 (4) "Enterprise risk" means any activity, circumstance, event, or  
15 series of events involving one or more affiliates of an insurer that,  
16 if not remedied promptly, is likely to have a material adverse effect  
17 upon the financial condition or liquidity of the insurer or its  
18 insurance holding company system as a whole including, but not limited  
19 to, anything that would cause the insurer's risk-based capital to fall  
20 into company action level as set forth in RCW 48.05.440 or 48.43.310 or  
21 would cause the insurer to be in hazardous financial condition as  
22 defined in WAC 284-16-310.

23 (5) "Insurance holding company system" means a system that consists  
24 of two or more affiliated persons, one or more of which is an insurer.

25 ~~((4) The term)~~ (6) "Insurer" ((has the same meaning as set forth  
26 in RCW 48.01.050;)) includes an insurer authorized under chapter 48.05  
27 RCW, a fraternal mutual insurer or society holding a license under RCW  
28 48.36A.290, a health care service contractor registered under chapter  
29 48.44 RCW, a health maintenance organization registered under chapter  
30 48.46 RCW, and a self-funded multiple employer welfare arrangement  
31 under chapter 48.125 RCW, as well as all persons engaged as, or  
32 purporting to be engaged as insurers, fraternal benefit societies,  
33 health care service contractors, health maintenance organizations, or  
34 self-funded multiple employer welfare arrangements in this state, and  
35 to persons in process of organization to become insurers, fraternal  
36 benefit societies, health care service contractors, health maintenance  
37 organizations, or self-funded multiple employer welfare arrangements,  
38 except it does not include agencies, authorities, or instrumentalities

1 of the United States, its possessions and territories, the commonwealth  
2 of Puerto Rico, the District of Columbia, or a state or political  
3 subdivision of a state.

4 ~~((+5)A))~~ (7) "Person" ((is)) means an individual, a corporation,  
5 a partnership, an association, a joint stock company, a trust, an  
6 unincorporated organization, ((a)) any similar entity, or any  
7 combination of the foregoing acting in concert, but does not include a  
8 joint venture partnership exclusively engaged in owning, managing,  
9 leasing, or developing real or tangible personal property.

10 ~~((+6)A))~~ (8) "Securityholder" means a securityholder of a  
11 specified person ((is one)) who owns ((a)) any security of that person,  
12 including common stock, preferred stock, debt obligations, and any  
13 other security convertible into or evidencing the right to acquire any  
14 of the foregoing.

15 ~~((+7)A))~~ (9) "Subsidiary" means a subsidiary of a specified person  
16 who is an affiliate controlled by that person directly or indirectly  
17 through one or more intermediaries.

18 ~~((+8)The term))~~ (10) "Supervisory colleges" means a forum for  
19 cooperation and communication among involved regulators and  
20 international supervisors facilitating the effectiveness of supervision  
21 of entities which belong to an insurance group and supervision of the  
22 group as a whole on a group-wide basis and improving the legal entity  
23 supervision of the entities within the insurance group.

24 (11) "Voting security" includes ((a)) any security convertible into  
25 or evidencing a right to acquire a voting security.

26 **Sec. 2.** RCW 48.31B.010 and 1993 c 462 s 3 are each amended to read  
27 as follows:

28 (1) A domestic insurer, either by itself or in cooperation with one  
29 or more persons, may organize or acquire one or more subsidiaries. The  
30 subsidiaries may conduct any kind of business or businesses authorized  
31 in RCW 48.13.061(4) and subject to the percentage limitations contained  
32 in chapter 48.13 RCW.

33 (2) If an insurer ceases to control a subsidiary, it shall dispose  
34 of any investment in the subsidiary within three years from the time of  
35 the cessation of control or within such further time as the  
36 commissioner may prescribe, unless at any time after the investment

1 ((has been)) was made, the investment ((meets)) met the requirements  
2 for investment under any other section of this title, and the insurer  
3 has notified the commissioner thereof.

4 **Sec. 3.** RCW 48.31B.015 and 1993 c 462 s 4 are each amended to read  
5 as follows:

6 (1)(a) No person other than the issuer may make a tender offer for  
7 or a request or invitation for tenders of, or enter into an agreement  
8 to exchange securities of, seek to acquire, or acquire, in the open  
9 market or otherwise, voting security of a domestic insurer if, after  
10 the consummation thereof, the person would, directly or indirectly, or  
11 by conversion or by exercise of a right to acquire, be in control of  
12 the insurer((-)) and no person may enter into an agreement to merge  
13 with or otherwise to acquire control of a domestic insurer or any  
14 person controlling a domestic insurer unless, at the time the offer,  
15 request, or invitation is made or the agreement is entered into, or  
16 ((before)) prior to the acquisition of the securities if no offer or  
17 agreement is involved, the person has filed with the commissioner and  
18 has sent to the insurer, a statement containing the information  
19 required by this section and the offer, request, invitation, agreement,  
20 or acquisition has been approved by the commissioner as prescribed in  
21 this ((section)) chapter.

22 (b) For purposes of this section, any controlling person of a  
23 domestic insurer seeking to divest its controlling interest in the  
24 domestic insurer, in any manner, must file with the commissioner, with  
25 a copy to the insurer, notice of its proposed divestiture at least  
26 thirty days prior to the cessation of control. If the statement  
27 referred to in (a) of this subsection is otherwise filed, this  
28 subsection does not apply.

29 (c) With respect to a transaction subject to this section, the  
30 acquiring person must also file a preacquisition notification with the  
31 commissioner, which must contain the information set forth in RCW  
32 48.31B.020(3)(a). A failure to file the notification may be subject to  
33 penalties specified in RCW 48.31B.020(5)(c).

34 (d) For purposes of this section a domestic insurer includes a  
35 person controlling a domestic insurer unless the person, as determined  
36 by the commissioner, is either directly or through its affiliates  
37 primarily engaged in business other than the business of insurance.

1 ((However, the person shall file a preacquisition notification with the  
2 commissioner containing the information set forth in RCW  
3 48.31B.020(3)(a) sixty days before the proposed effective date of the  
4 acquisition. Persons who fail to file the required preacquisition  
5 notification with the commissioner are subject to the penalties in RCW  
6 48.31B.020(5)(c).)) For the purposes of this section, "person" does  
7 not include ((a)) any securities broker holding, in usual and customary  
8 broker's function, less than twenty percent of the voting securities of  
9 an insurance company or of ((a)) any person who controls an insurance  
10 company.

11 (2) The statement to be filed with the commissioner under this  
12 section must be made under oath or affirmation and must contain the  
13 following ((information)):

14 (a) The name and address of each person by whom or on whose behalf  
15 the merger or other acquisition of control referred to in subsection  
16 (1) of this section is to be effected, ((hereinafter called "          ")) and  
17 referred to in this section as the acquiring party((          )) and:

18 (i) If that person is an individual, his or her principal  
19 occupation and all offices and positions held during the past five  
20 years, and any conviction of crimes other than minor traffic violations  
21 during the past ten years; and

22 (ii) If that person is not an individual, a report of the nature of  
23 its business operations during the past five years or for such lesser  
24 period as the person and any predecessors have been in existence; an  
25 informative description of the business intended to be done by the  
26 person and the person's subsidiaries; any convictions of crimes during  
27 the past ten years; and a list of all individuals who are or who have  
28 been selected to become directors or executive officers of the person,  
29 or who perform or will perform functions appropriate to those  
30 positions. The list must include for each such individual the  
31 information required by (a)(i) of this subsection((          ));

32 (b) The source, nature, and amount of the consideration used or to  
33 be used in effecting the merger or other acquisition of control, a  
34 description of any transaction ((in which)) where funds were or are to  
35 be obtained for any such purpose, including ((a)) any pledge of the  
36 insurer's stock((          )) or the stock of any of its subsidiaries or  
37 controlling affiliates, and the identity of persons furnishing ((the))  
38 consideration. However, ((where)) when a source of ((the))

1 consideration is a loan made in the lender's ordinary course of  
2 business, the identity of the lender must remain confidential, if the  
3 person filing the statement so requests((-));

4 (c) Fully audited financial information as to the earnings and  
5 financial condition of each acquiring party for the preceding five  
6 fiscal years of each acquiring party, or for such lesser period as the  
7 acquiring party and any predecessors have been in existence, and  
8 similar unaudited information as of a date not earlier than ninety days  
9 ((before)) prior to the filing of the statement((-));

10 (d) Any plans or proposals that each acquiring party may have to  
11 liquidate the insurer, to sell its assets or merge or consolidate it  
12 with any person, or to make any other material change in its business  
13 or corporate structure or management((-));

14 (e) The number of shares of any security referred to in subsection  
15 (1) of this section ((that)) which each acquiring party proposes to  
16 acquire, the terms of the offer, request, invitation, agreement, or  
17 acquisition referred to in subsection (1) of this section, and a  
18 statement as to the method by which the fairness of the proposal was  
19 arrived at((-));

20 (f) The amount of each class of any security referred to in  
21 subsection (1) of this section that is beneficially owned or concerning  
22 which there is a right to acquire beneficial ownership by each  
23 acquiring party((-));

24 (g) A full description of any contracts, arrangements, or  
25 understandings with respect to any security referred to in subsection  
26 (1) of this section in which an acquiring party is involved, including  
27 but not limited to transfer of any of the securities, joint ventures,  
28 loan or option arrangements, puts or calls, guarantees of loans,  
29 guarantees against loss or guarantees of profits, division of losses or  
30 profits, or the giving or withholding of proxies. The description must  
31 identify the persons with whom the contracts, arrangements, or  
32 understandings have been entered into((-));

33 (h) A description of the purchase of any security referred to in  
34 subsection (1) of this section during the twelve calendar months  
35 ((before)) preceding the filing of the statement, by an acquiring  
36 party, including the dates of purchase, names of the purchasers, and  
37 consideration paid or agreed to be paid ((for the security.));

1 (i) A description of any recommendations to purchase any security  
2 referred to in subsection (1) of this section made during the twelve  
3 calendar months (~~(before)~~) preceding the filing of the statement, by an  
4 acquiring party, or by anyone based upon interviews or at the  
5 suggestion of the acquiring party(~~(-)~~);

6 (j) Copies of all tender offers for, requests or invitations for  
7 tenders of, exchange offers for, and agreements to acquire or exchange  
8 any securities referred to in subsection (1) of this section, and, if  
9 distributed, of additional soliciting material relating to (~~the~~  
10 ~~securities-~~) them;

11 (k) The term of an agreement, contract, or understanding made with  
12 or proposed to be made with (~~(a)~~) any broker-dealer as to solicitation  
13 or securities referred to in subsection (1) of this section for tender,  
14 and the amount of fees, commissions, or other compensation to be paid  
15 to broker-dealers with regard (~~(to the securities-)~~) thereto;

16 (l) An agreement by the person required to file the statement  
17 referred to in subsection (1) of this section that it will provide the  
18 annual report, specified in RCW 48.31B.025(12), for so long as control  
19 exists;

20 (m) An acknowledgement by the person required to file the statement  
21 referred to in subsection (1) of this section that the person and all  
22 subsidiaries within its control in the insurance holding company system  
23 will provide information to the commissioner upon request as necessary  
24 to evaluate enterprise risk to the insurer;

25 (n) Such additional information as the commissioner may prescribe  
26 by rule as necessary or appropriate for the protection of policyholders  
27 of the insurer or in the public interest(~~(-)~~);

28 (o) If the person required to file the statement referred to in  
29 subsection (1) of this section is a partnership, limited partnership,  
30 syndicate, or other group, the commissioner may require that the  
31 information called for by (a) through (~~(+)~~) (n) of this subsection  
32 shall be given with respect to each partner of the partnership or  
33 limited partnership, each member of the syndicate or group, and each  
34 person who controls a partner or member. If (~~(a)~~) any partner, member,  
35 or person is a corporation(~~(-)~~) or the person required to file the  
36 statement referred to in subsection (1) of this section is a  
37 corporation, the commissioner may require that the information called  
38 for by (a) through (~~(+)~~) (n) of this subsection (~~(shall)~~) be given

1 with respect to the corporation, each officer and director of the  
2 corporation, and each person who is directly or indirectly the  
3 beneficial owner of more than ten percent of the outstanding voting  
4 securities of the corporation(~~(-)~~);

5 (p) If (~~(a)~~) any material change occurs in the facts set forth in  
6 the statement filed with the commissioner and sent to the insurer under  
7 this section, an amendment setting forth the change, together with  
8 copies of all documents and other material relevant to the change, must  
9 be filed with the commissioner and sent to the insurer within two  
10 business days after the person learns of the change.

11 (3) If (~~(an)~~) any offer, request, invitation, agreement, or  
12 acquisition referred to in subsection (1) of this section is proposed  
13 to be made by means of a registration statement under the securities  
14 act of 1933 or in circumstances requiring the disclosure of similar  
15 information under the securities exchange act of 1934, or under a state  
16 law requiring similar registration or disclosure, the person required  
17 to file the statement referred to in subsection (1) of this section may  
18 (~~(use those)~~) utilize the documents in furnishing the information  
19 called for by that statement.

20 (4)(a) The commissioner shall approve a merger or other acquisition  
21 of control referred to in subsection (1) of this section unless, after  
22 a public hearing thereon, he or she finds that:

23 (i) After the change of control, the domestic insurer referred to  
24 in subsection (1) of this section would not be able to satisfy the  
25 requirements for the issuance of a license to write the line or lines  
26 of insurance for which it is presently licensed;

27 (ii) The effect of the merger or other acquisition of control would  
28 be substantially to lessen competition in insurance in this state or  
29 tend to create a monopoly therein. In applying the competitive  
30 standard in this subsection (4)(a)(ii) (~~(of this subsection)~~):

31 (A) The informational requirements of RCW 48.31B.020(3)(a) and the  
32 standards of RCW 48.31B.020(4)(b) apply;

33 (B) The (~~commissioner may not disapprove the~~) merger or other  
34 acquisition may not be disapproved if the commissioner finds that any  
35 of the situations meeting the criteria provided by RCW 48.31B.020(4)(c)  
36 exist; and

37 (C) The commissioner may condition the approval of the merger or



1 other acquisition on the removal of the basis of disapproval within a  
2 specified period of time;

3 (iii) The financial condition of (~~an~~) any acquiring party is such  
4 as might jeopardize the financial stability of the insurer, or  
5 prejudice the interest of its policyholders;

6 (iv) The plans or proposals (~~that~~) which the acquiring party has  
7 to liquidate the insurer, sell its assets, consolidate or merge it with  
8 any person, or to make any other material change in its business or  
9 corporate structure or management, are unfair and unreasonable to  
10 policyholders of the insurer and not in the public interest;

11 (v) The competence, experience, and integrity of those persons who  
12 would control the operation of the insurer are such that it would not  
13 be in the interest of policyholders of the insurer and of the public to  
14 permit the merger or other acquisition of control; or

15 (vi) The acquisition is likely to be hazardous or prejudicial to  
16 the insurance-buying public.

17 (b) The commissioner shall approve an exchange or other acquisition  
18 of control referred to in this section within sixty days after he or  
19 she declares the statement filed under this section to be complete and  
20 after holding a public hearing. At the hearing, the person filing the  
21 statement, the insurer, and any person whose significant interest is  
22 determined by the commissioner to be affected may present evidence,  
23 examine and cross-examine witnesses, and offer oral and written  
24 arguments and in connection therewith may conduct discovery proceedings  
25 in the same manner as is allowed in the superior court of this state.  
26 All discovery proceedings must be concluded not later than three days  
27 before the commencement of the public hearing.

28 (c) If the proposed acquisition of control will require the  
29 approval of more than one commissioner, the public hearing referred to  
30 in (b) of this subsection may be held on a consolidated basis upon  
31 request of the person filing the statement referred to in subsection  
32 (1) of this section. Such person shall file the statement referred to  
33 in subsection (1) of this section with the national association of  
34 insurance commissioners within five days of making the request for a  
35 public hearing. A commissioner may opt out of a consolidated hearing,  
36 and shall provide notice to the applicant of the opt out within ten  
37 days of the receipt of the statement referred to in subsection (1) of  
38 this section. A hearing conducted on a consolidated basis shall be

1 public and shall be held within the United States before the  
2 commissioners of the states in which the insurers are domiciled. Such  
3 commissioners shall hear and receive evidence. A commissioner may  
4 attend such hearing, in person, or by telecommunication.

5 (d) In connection with a change of control of a domestic insurer,  
6 any determination by the commissioner that the person acquiring control  
7 of the insurer shall be required to maintain or restore the capital of  
8 the insurer to the level required by the laws and rules of this state  
9 shall be made not later than sixty days after the date of notification  
10 of the change in control submitted pursuant to subsection (1)(a) of  
11 this section.

12 (e) The commissioner may retain at the acquiring person's expense  
13 any attorneys, actuaries, accountants, and other experts not otherwise  
14 a part of the commissioner's staff as may be reasonably necessary to  
15 assist the commissioner in reviewing the proposed acquisition of  
16 control. All reasonable costs of a hearing held under this section, as  
17 determined by the commissioner, including costs associated with the  
18 commissioner's use of investigatory, professional, and other necessary  
19 personnel, mailing of required notices and other information, and use  
20 of equipment or facilities, must be paid before issuance of the  
21 commissioner's order by the acquiring person.

22 (5) This section does not apply to:

23 (a) ~~((A))~~ Any transaction that is subject to RCW 48.31.010, dealing  
24 with the merger or consolidation of two or more insurers;

25 (b) An offer, request, invitation, agreement, or acquisition  
26 ~~((that))~~ which the commissioner by order ~~((has exempted from this~~  
27 ~~section as: (i) Not))~~ exempts as not having been made or entered into  
28 for the purpose and not having the effect of changing or influencing  
29 the control of a domestic insurer, or ~~((+ii+))~~ as otherwise not  
30 comprehended within the purposes of this section.

31 (6) The following are violations of this section:

32 (a) The failure to file a statement, amendment, or other material  
33 required to be filed under subsection (1) or (2) of this section; or

34 (b) The effectuation or an attempt to effectuate an acquisition of  
35 control of, divestiture of, or merger with, a domestic insurer unless  
36 the commissioner has given approval thereto.

37 (7) The courts of this state ~~((have))~~ are hereby vested with  
38 jurisdiction over every person not resident, domiciled, or authorized

1 to do business in this state who files a statement with the  
2 commissioner under this section, and over all actions involving that  
3 person arising out of violations of this section, and each such person  
4 is deemed to have performed acts equivalent to and constituting an  
5 appointment by that person of the commissioner to be the person's true  
6 and lawful attorney upon whom may be served all lawful process in an  
7 action, suit, or proceeding arising out of violations of this section.  
8 Copies of all (~~such~~) lawful process (~~shall~~) must be served on the  
9 commissioner and transmitted by registered or certified mail by the  
10 commissioner to such person at the person's last known address.

11 **Sec. 4.** RCW 48.31B.020 and 1993 c 462 s 5 are each amended to read  
12 as follows:

13 (1) The following definitions (~~in this subsection~~) apply (~~only~~)  
14 for the purposes of this section(~~;~~) only:

15 (a) "Acquisition" means (~~an~~) any agreement, arrangement, or  
16 activity(~~;~~) the consummation of which results in a person acquiring  
17 directly or indirectly the control of another person, and includes but  
18 is not limited to the acquisition of voting securities, the acquisition  
19 of assets, bulk reinsurance, and mergers.

20 (b) An "involved insurer" includes an insurer which either acquires  
21 or is acquired, is affiliated with an acquirer or acquired, or is the  
22 result of a merger.

23 (2)(a) Except as exempted in (b) of this subsection, this section  
24 applies to any acquisition in which there is a change in control of an  
25 insurer authorized to do business in this state.

26 (b) This section does not apply to the following:

27 (i) (~~An acquisition subject to approval or disapproval by the~~  
28 ~~commissioner under RCW 48.31B.015;~~

29 ~~(ii))~~) A purchase of securities solely for investment purposes so  
30 long as the securities are not used by voting or otherwise to cause or  
31 attempt to cause the substantial lessening of competition in any  
32 insurance market in this state. If a purchase of securities results in  
33 a presumption of control under RCW 48.31B.005(~~(+2)~~) (3), it is not  
34 solely for investment purposes unless the commissioner of the insurer's  
35 state of domicile accepts a disclaimer of control or affirmatively  
36 finds that control does not exist and the disclaimer action or

1 affirmative finding is communicated by the domiciliary commissioner to  
2 the commissioner of this state;

3 ~~((+iii+))~~ (ii) The acquisition of a person by another person when  
4 neither person is directly nor through affiliates primarily engaged in  
5 the business of insurance, if preacquisition notification is filed with  
6 the commissioner in accordance with subsection (3)(a) of this section  
7 sixty days ~~((before))~~ prior to the proposed effective date of the  
8 acquisition. However, the preacquisition notification is not required  
9 for exclusion from this section if the acquisition would otherwise be  
10 excluded from this section by this subsection (2)(b);

11 ~~((+iv+))~~ (iii) The acquisition of already affiliated persons;

12 ~~((+v+))~~ (iv) An acquisition if, as an immediate result of the  
13 acquisition:

14 (A) In no market would the combined market share of the involved  
15 insurers exceed five percent of the total market;

16 (B) There would be no increase in any market share; or

17 (C) In no market would the:

18 (I) ~~((The))~~ Combined market share of the involved insurers exceed  
19 twelve percent of the total market; and

20 (II) ~~((The))~~ Market share increase by more than two percent of the  
21 total market.

22 For the purpose of this subsection (2)(b)~~((+v) of this subsection))~~  
23 (iv), a ~~((=))~~market~~((=))~~ means direct written insurance premium in this  
24 state for a line of business as contained in the annual statement  
25 required to be filed by insurers licensed to do business in this state;

26 ~~((+vi+))~~ (v) An acquisition for which a preacquisition notification  
27 would be required under this section due solely to the resulting effect  
28 on the ocean marine insurance line of business;

29 ~~((+vii+))~~ (vi) An acquisition of an insurer whose domiciliary  
30 commissioner affirmatively finds~~((+))~~ that the insurer is in failing  
31 condition~~((+))~~ and there is a lack of feasible alternative to improving  
32 such condition~~((+))~~ and the public benefits of improving the insurer's  
33 condition through the acquisition exceed the public benefits that would  
34 arise from not lessening competition; and the findings are communicated  
35 by the domiciliary commissioner to the commissioner of this state.

36 (3) An acquisition covered by subsection (2) of this section may be  
37 subject to an order under subsection (5) of this section unless the

1 acquiring person files a preacquisition notification and the waiting  
2 period has expired. The acquired person may file a preacquisition  
3 notification.

4 (a) The preacquisition notification must be in such form and  
5 contain such information as prescribed by the national association of  
6 insurance commissioners relating to those markets that, under  
7 subsection (2)(b)((+v)) (iv) of this section, cause the acquisition  
8 not to be exempted from this section. The commissioner may require  
9 such additional material and information as he or she deems necessary  
10 to determine whether the proposed acquisition, if consummated, would  
11 violate the competitive standard of subsection (4) of this section.  
12 The required information may include an opinion of an economist as to  
13 the competitive impact of the acquisition in this state accompanied by  
14 a summary of the education and experience of the person indicating his  
15 or her ability to render an informed opinion.

16 (b) The waiting period required begins on the date the commissioner  
17 declares the preacquisition notification to be complete and ends on the  
18 earlier of the sixtieth day after the date of the declaration or the  
19 termination of the waiting period by the commissioner. ((Before))  
20 Prior to the end of the waiting period, the commissioner on a one-time  
21 basis may require the submission of additional needed information  
22 relevant to the proposed acquisition(~~(. If additional information is~~  
23 ~~required)), in which event the waiting period ends on the earlier of~~  
24 the sixtieth day after ((~~the commissioner declares he or she has~~  
25 ~~received~~) receipt of the additional information by the commissioner or  
26 the termination of the waiting period by the commissioner.

27 (4)(a) The commissioner may enter an order under subsection (5)(a)  
28 of this section with respect to an acquisition if there is substantial  
29 evidence that the effect of the acquisition may be substantially to  
30 lessen competition in a line of insurance in this state or tend to  
31 create a monopoly therein or if the insurer fails to file adequate  
32 information in compliance with subsection (3) of this section.

33 (b) In determining whether a proposed acquisition would violate the  
34 competitive standard of (a) of this subsection, the commissioner shall  
35 consider the following:

36 (i) An acquisition covered under subsection (2) of this section  
37 involving two or more insurers competing in the same market is prima  
38 facie evidence of violation of the competitive standards, as follows:

1 (A) If the market is highly concentrated and the involved insurers  
2 possess the following shares of the market:

3	Insurer A	Insurer B
4	4%	4% or more
5	10%	2% or more
6	15%	1% or more; or

7 (B) If the market is not highly concentrated and the involved  
8 insurers possess the following shares of the market:

9	Insurer A	Insurer B
10	5%	5% or more
11	10%	4% or more
12	15%	3% or more
13	19%	1% or more

14 A highly concentrated market is one in which the share of the four  
15 largest insurers is seventy-five percent or more of the market.  
16 Percentages not shown in the tables are interpolated proportionately to  
17 the percentages that are shown. If more than two insurers are  
18 involved, exceeding the total of the two columns in the table is prima  
19 facie evidence of violation of the competitive standard in (a) of this  
20 subsection. For the purpose of this subsection (4)(b)(i) (~~(of this~~  
21 ~~subsection)~~), the insurer with the largest share of the market is  
22 Insurer A.

23 (ii) There is a significant trend toward increased concentration  
24 when the aggregate market share of a grouping of the largest insurers  
25 in the market, from the two largest to the eight largest, has increased  
26 by seven percent or more of the market over a period of time extending  
27 from a base year five to ten years before the acquisition up to the  
28 time of the acquisition. An acquisition or merger covered under  
29 subsection (2) of this section involving two or more insurers competing  
30 in the same market is prima facie evidence of violation of the  
31 competitive standard in (a) of this subsection if:

1 (A) There is a significant trend toward increased concentration in  
2 the market;

3 (B) One of the insurers involved is one of the insurers in a  
4 grouping of such large insurers showing the requisite increase in the  
5 market share; and

6 (C) Another involved insurer's market is two percent or more.

7 (iii) For the purposes of this subsection (4)(b) (~~of this~~  
8 ~~subsection~~):

9 (A) (~~The term~~) "Insurer" includes ((a)) any company or group of  
10 companies under common management, ownership, or control;

11 (B) (~~The term~~) "Market" means the relevant product and  
12 geographical markets. In determining the relevant product and  
13 geographical markets, the commissioner shall give due consideration to,  
14 among other things, the definitions or guidelines, if any, adopted by  
15 the National Association of Insurance Commissioners and to information,  
16 if any, submitted by parties to the acquisition. In the absence of  
17 sufficient information to the contrary, the relevant product market is  
18 assumed to be the direct written insurance premium for a line of  
19 business, such line being that used in the annual statement required to  
20 be filed by insurers doing business in this state, and the relevant  
21 geographical market is assumed to be this state;

22 (C) The burden of showing prima facie evidence of violation of the  
23 competitive standard rests upon the commissioner.

24 (iv) Even though an acquisition is not prima facie violative of the  
25 competitive standard under (b)(i) and (ii) of this subsection, the  
26 commissioner may establish the requisite anticompetitive effect based  
27 upon other substantial evidence. Even though an acquisition is prima  
28 facie violative of the competitive standard under (b)(i) and (ii) of  
29 this subsection, a party may establish the absence of the requisite  
30 anticompetitive effect based upon other substantial evidence. Relevant  
31 factors in making a determination under (~~(b)(iv) of~~) this subsection  
32 include, but are not limited to, the following: Market shares,  
33 volatility of ranking of market leaders, number of competitors,  
34 concentration, trend of concentration in the industry, and ease of  
35 entry and exit into the market.

36 (c) An order may not be entered under subsection (5)(a) of this  
37 section if:

1 (i) The acquisition will yield substantial economies of scale or  
2 economies in resource use that cannot be feasibly achieved in any other  
3 way, and the public benefits that would arise from the economies exceed  
4 the public benefits that would arise from not lessening competition; or

5 (ii) The acquisition will substantially increase the availability  
6 of insurance, and the public benefits of the increase exceed the public  
7 benefits that would arise from not lessening competition.

8 (5)(a)(i) If an acquisition violates the standards of this section,  
9 the commissioner may enter an order:

10 (A) Requiring an involved insurer to cease and desist from doing  
11 business in this state with respect to the line or lines of insurance  
12 involved in the violation; or

13 (B) Denying the application of an acquired or acquiring insurer for  
14 a license to do business in this state.

15 (ii) ~~((The commissioner))~~ Such an order may not ~~((enter the order))~~  
16 be entered unless:

17 (A) There is a hearing;

18 (B) Notice of the hearing is issued ~~((before))~~ prior to the end of  
19 the waiting period and not less than fifteen days ~~((before))~~ prior to  
20 the hearing; and

21 (C) The hearing is concluded and the order is issued no later than  
22 sixty days after the ~~((end of the waiting period))~~ filing of the  
23 preacquisition notification with the commissioner.

24 (iii) Every order must be accompanied by a written decision of the  
25 commissioner setting forth ~~((his or her))~~ findings of fact and  
26 conclusions of law.

27 ~~((+iii))~~ (iv) An order entered under this subsection (5)(a) ~~((of~~  
28 ~~this subsection))~~ may not become final earlier than thirty days after  
29 it is issued, during which time the involved insurer may submit a plan  
30 to remedy the anticompetitive impact of the acquisition within a  
31 reasonable time. Based upon the plan or other information, the  
32 commissioner shall specify the conditions, if any, under the time  
33 period during which the aspects of the acquisition causing a violation  
34 of the standards of this section would be remedied and the order  
35 vacated or modified.

36 ~~((+iv))~~ (v) An order pursuant to this subsection (5)(a) ~~((of this~~  
37 ~~subsection))~~ does not apply if the acquisition is not consummated.



1 (b) ((A)) Any person who violates a cease and desist order of the  
2 commissioner under (a) of this subsection and while the order is in  
3 effect, may, after notice and hearing and upon order of the  
4 commissioner, be subject at the discretion of the commissioner to one  
5 or more of the following:

6 (i) A monetary ((penalty)) fine of not more than ten thousand  
7 dollars for every day of violation; or

8 (ii) Suspension or revocation of the person's license; or

9 (iii) Both (b)(i) and ((b))((ii)) of this subsection.

10 (c) ((An)) Any insurer or other person who fails to make a filing  
11 required by this section, and who also fails to demonstrate a good  
12 faith effort to comply with the filing requirement, is subject to a  
13 civil penalty of not more than fifty thousand dollars.

14 (6) RCW 48.31B.045 (2) and (3) and 48.31B.050 do not apply to  
15 acquisitions covered under subsection (2) of this section.

16 **Sec. 5.** RCW 48.31B.025 and 2000 c 214 s 1 are each amended to read  
17 as follows:

18 (1) Every insurer that is authorized to do business in this state  
19 ((that)) and is a member of an insurance holding company system shall  
20 register with the commissioner, except a foreign insurer subject to  
21 registration requirements and standards adopted by statute or  
22 regulation in the jurisdiction of its domicile that are substantially  
23 similar to those contained in:

24 (a) This section;

25 (b) RCW 48.31B.030 (1)(a), (2), and (3); and

26 (c) Either RCW 48.31B.030(1)(b) or a provision such as the  
27 following: Each registered insurer shall keep current the information  
28 required to be disclosed in its registration statement by reporting all  
29 material changes or additions within fifteen days after the end of the  
30 month in which it learns of each change or addition.

31 ((An)) Any insurer which is subject to registration under this  
32 section shall register within fifteen days after it becomes subject to  
33 registration, and annually thereafter by ((May 15th)) April 30th of  
34 each year for the previous calendar year, unless the commissioner for  
35 good cause shown extends the time for registration, and then within the  
36 extended time. The commissioner may require ((an)) any insurer  
37 authorized to do business in the state that is a member of a holding

1 company system, (~~but that~~) and which is not subject to registration  
2 under this section, to furnish a copy of the registration statement,  
3 the summary specified in subsection (3) of this section, or other  
4 information filed by the insurance company with the insurance  
5 regulatory authority of its domiciliary jurisdiction.

6 (2) (~~An~~) Every insurer subject to registration shall file the  
7 registration statement on a form and in a format prescribed by the  
8 national association of insurance commissioners, containing the  
9 following current information:

10 (a) The capital structure, general financial condition, ownership,  
11 and management of the insurer and any person controlling the insurer;

12 (b) The identity and relationship of every member of the insurance  
13 holding company system;

14 (c) The following agreements in force, and transactions currently  
15 outstanding or that have occurred during the last calendar year between  
16 the insurer and its affiliates:

17 (i) Loans, other investments, or purchases, sales, or exchanges of  
18 securities of the affiliates by the insurer or of the insurer by its  
19 affiliates;

20 (ii) Purchases, sales, or exchange of assets;

21 (iii) Transactions not in the ordinary course of business;

22 (iv) Guarantees or undertakings for the benefit of an affiliate  
23 that result in an actual contingent exposure of the insurer's assets to  
24 liability, other than insurance contracts entered into in the ordinary  
25 course of the insurer's business;

26 (v) All management agreements, service contracts, and cost-sharing  
27 arrangements;

28 (vi) Reinsurance agreements;

29 (vii) Dividends and other distributions to shareholders; and

30 (viii) Consolidated tax allocation agreements;

31 (d) Any pledge of the insurer's stock, including stock of  
32 subsidiary or controlling affiliate, for a loan made to a member of the  
33 insurance holding company system;

34 (e) If requested by the commissioner, the insurer must include  
35 financial statements of or within an insurance holding company system,  
36 including all affiliates. Financial statements may include but are not  
37 limited to annual audited financial statements filed with the United  
38 States securities and exchange commission pursuant to the securities

1 act of 1933, as amended, or the securities exchange act of 1934, as  
2 amended. An insurer required to file financial statements pursuant to  
3 this subsection (2)(e) may satisfy the request by providing the  
4 commissioner with the most recently filed parent corporation financial  
5 statements that have been filed with the United States securities and  
6 exchange commission;

7 (f) Other matters concerning transactions between registered  
8 insurers and any affiliates as may be included from time to time in  
9 registration forms adopted or approved by the commissioner;

10 (g) Statements that the insurer's board of directors oversees  
11 corporate governance and internal controls and that the insurer's  
12 officers or senior management have approved, implemented, and continue  
13 to maintain and monitor corporate governance and internal control  
14 procedures; and

15 (h) Any other information required by the commissioner by rule.

16 (3) All registration statements must contain a summary outlining  
17 all items in the current registration statement representing changes  
18 from the prior registration statement.

19 (4) No information need be disclosed on the registration statement  
20 filed under subsection (2) of this section if the information is not  
21 material for the purposes of this section. Unless the commissioner by  
22 rule or order provides otherwise, sales, purchases, exchanges, loans or  
23 extensions of credit, investments, or guarantees involving one-half of  
24 one percent or less of an insurer's admitted assets as of (~~the 31st~~  
25 ~~day of the previous~~) December 31st next preceding are not material for  
26 purposes of this section.

27 (5)(a) Subject to RCW 48.31B.030(2), each registered insurer shall  
28 report to the commissioner all dividends and other distributions to  
29 shareholders within five business days after their declaration and (~~at~~  
30 ~~least~~) fifteen business days before payment, and shall provide the  
31 commissioner such other information as may be required by rule.

32 (b) If the commissioner determines that a registered insurer's  
33 surplus as regards policyholders is not reasonable in relation to the  
34 insurer's outstanding liabilities and adequate to its financial needs,  
35 the commissioner may order the registered insurance company to limit or  
36 discontinue the payment of stockholder dividends until such time as the  
37 surplus is adequate.

1 (6) ((A)) Any person within an insurance holding company system  
2 subject to registration (~~((shall))~~) is required to provide complete and  
3 accurate information to an insurer, where the information is reasonably  
4 necessary to enable the insurer to comply with this chapter.

5 (7) The commissioner shall terminate the registration of an insurer  
6 that demonstrates that it no longer is a member of an insurance holding  
7 company system.

8 (8) The commissioner may require or allow two or more affiliated  
9 insurers subject to registration under this section to file a  
10 consolidated registration statement.

11 (9) The commissioner may allow an insurer authorized to do business  
12 in this state and which is part of an insurance holding company system  
13 to register on behalf of an affiliated insurer (~~((that))~~) which is  
14 required to register under subsection (1) of this section and to file  
15 all information and material required to be filed under this section.

16 (10) This section does not apply to an insurer, information, or  
17 transaction if and to the extent that the commissioner by rule or order  
18 exempts the insurer, information, or transaction from this section.

19 (11) ((A)) Any person may file with the commissioner a disclaimer  
20 of affiliation with (~~((an))~~) any authorized insurer, or (~~((an))~~) any  
21 insurer or (~~((a))~~) any member of (~~((an))~~) any insurance holding company  
22 system may file the disclaimer. The person making such a filing with  
23 the commissioner shall at the same time deliver a complete copy of the  
24 filing to each domestic insurer which is the subject of such filing.  
25 The disclaimer must fully disclose all material relationships and bases  
26 for affiliation between the person and the insurer as well as the basis  
27 for disclaiming the affiliation. (~~((After a disclaimer has been filed,~~  
28 ~~the insurer is relieved of any duty to register or report under this~~  
29 ~~section that may arise out of the insurer's relationship with the~~  
30 ~~person unless and until the commissioner disallows the disclaimer. The~~  
31 ~~commissioner shall disallow the disclaimer only after furnishing all~~  
32 ~~parties in interest with notice and opportunity to be heard and after~~  
33 ~~making specific findings of fact to support the disallowance.~~

34 (12)) A disclaimer of affiliation is deemed to have been granted  
35 unless the commissioner, within thirty days following receipt of a  
36 complete disclaimer, notifies the filing party the disclaimer is  
37 disallowed. In the event of disallowance, the disclaiming party may  
38 request an administrative hearing, which shall be granted. The

1 disclaiming party is relieved of its duty to register under this  
2 section if approval of the disclaimer has been granted by the  
3 commissioner, or if the disclaimer is deemed to have been approved.

4 (12) The ultimate controlling person of every insurer subject to  
5 registration shall also file an annual enterprise risk report. The  
6 report must, to the best of the ultimate controlling person's knowledge  
7 and belief, identify the material risks within the insurance holding  
8 company system that could pose enterprise risk to the insurer. The  
9 report must be filed with the lead state commissioner of the insurance  
10 holding company system as determined by the procedures within the  
11 financial analysis handbook adopted by the national association of  
12 insurance commissioners.

13 (13) The failure to file a registration statement or ((a)) any  
14 summary of the registration statement or enterprise risk filing  
15 required by this section within the time specified for ((the)) filing  
16 is a violation of this section.

17 **Sec. 6.** RCW 48.31B.030 and 1993 c 462 s 7 are each amended to read  
18 as follows:

19 (1)(a) Transactions within ((a)) an insurance holding company  
20 system to which an insurer subject to registration is a party are  
21 subject to the following standards:

22 (i) The terms must be fair and reasonable;

23 (ii) Agreements for cost-sharing services and management must  
24 include such provisions as required by rule issued by the commissioner;

25 (iii) Charges or fees for services performed must be fair and  
26 reasonable;

27 ~~((iii))~~ (iv) Expenses incurred and payment received must be  
28 allocated to the insurer in conformity with customary insurance  
29 accounting practices consistently applied;

30 ~~((iv))~~ (v) The books, accounts, and records of each party to all  
31 such transactions must be so maintained as to clearly and accurately  
32 disclose the nature and details of the transactions((r)) including such  
33 accounting information as is necessary to support the reasonableness of  
34 the charges or fees to the respective parties; and

35 ~~((v))~~ (vi) The insurer's surplus regarding policyholders  
36 ((after)) following any dividends or distributions to shareholders or

1 affiliates must be reasonable in relation to the insurer's outstanding  
2 liabilities and adequate to its financial needs.

3 (b) The following transactions involving a domestic insurer and a  
4 person in its insurance holding company system, including amendments or  
5 modifications of affiliate agreements previously filed pursuant to this  
6 section, which are subject to the materiality standards contained in  
7 this subsection, may not be entered into unless the insurer has  
8 notified the commissioner in writing of its intention to enter into the  
9 transaction and the commissioner declares the notice to be sufficient  
10 at least sixty days before, or such shorter period as the commissioner  
11 may permit, and the commissioner has not disapproved it within that  
12 period. The notice for amendments or modifications must include the  
13 reasons for the change and the financial impact on the domestic  
14 insurer. Informal notice must be reported, within thirty days after a  
15 termination of a previously filed agreement, to the commissioner for  
16 determination of the type of filing required, if any:

17 (i) Sales, purchases, exchanges, loans or extensions of credit,  
18 guarantees, or investments if the transactions are equal to or exceed:

19 (A) With respect to nonlife insurers and not including health care  
20 service contractors and health maintenance organizations, the lesser of  
21 three percent of the insurer's admitted assets or twenty-five percent  
22 of surplus as regards policyholders;

23 (B) With respect to life insurers, three percent of the insurer's  
24 admitted assets (~~(; each as of the 31st day of the previous December)~~)  
25 as of December 31st next preceding;

26 (C) With respect to health care service contractors and health  
27 maintenance organizations, the lesser of five percent of the insurer's  
28 admitted assets or twenty-five percent of its capital and surplus or  
29 net worth as of December 31st next preceding;

30 (ii) Loans or extensions of credit to any person who is not an  
31 affiliate, where the insurer makes the loans or extensions of credit  
32 with the agreement or understanding that the proceeds of the  
33 transactions, in whole or in substantial part, are to be used to make  
34 loans or extensions of credit to, to purchase assets of, or to make  
35 investments in, an affiliate of the insurer making the loans or  
36 extensions of credit if the transactions are equal to or exceed:

37 (A) With respect to nonlife insurers and not including health care

1 service contractors and health maintenance organizations, the lesser of  
2 three percent of the insurer's admitted assets or twenty-five percent  
3 of surplus as regards policyholders;

4 (B) With respect to life insurers, three percent of the insurer's  
5 admitted assets (~~(; each as of the 31st day of the previous December)~~)  
6 as of December 31st next preceding;

7 (C) With respect to health care service contractors and health  
8 maintenance organizations, the lesser of five percent of the insurer's  
9 admitted assets or twenty-five percent of its capital and surplus or  
10 net worth as of December 31st next preceding;

11 (iii) Reinsurance agreements or modifications (~~(to them)~~) thereto,  
12 including:

13 (A) All reinsurance pooling agreements;

14 (B) Agreements in which the reinsurance premium or a change in the  
15 insurer's liabilities, or the projected reinsurance premium or a change  
16 in the insurer's liabilities in any of the next three years, equals or  
17 exceeds five percent of the insurer's surplus as regards policyholders,  
18 as of (~~(the 31st day of the previous)~~) December 31st next preceding,  
19 including those agreements that may require as consideration the  
20 transfer of assets from an insurer to a nonaffiliate, if an agreement  
21 or understanding exists between the insurer and nonaffiliate that any  
22 portion of the assets will be transferred to one or more affiliates of  
23 the insurer;

24 (iv) All management agreements, service contracts, tax allocation  
25 agreements, guarantees, and all cost-sharing arrangements; (~~(and)~~)

26 (v) Guarantees when made by a domestic insurer. However, a  
27 guarantee which is quantifiable as to amount is not subject to the  
28 notice requirements of this subsection (1)(b)(v) unless it exceeds the  
29 lesser of one-half of one percent of the insurer's admitted assets or  
30 ten percent of surplus as regards policyholders as of December 31st  
31 next preceding. Further, all guarantees which are not quantifiable as  
32 to amount are subject to the notice requirements of this subsection  
33 (1)(b)(v);

34 (vi) Direct or indirect acquisitions or investments in a person  
35 that controls the insurer or in an affiliate of the insurer in an  
36 amount which, together with its present holdings in such investments,  
37 exceeds two and one-half percent of the insurer's surplus to  
38 policyholders. Direct or indirect acquisitions or investments in

1 subsidiaries acquired or authorized pursuant to chapter 48.13 RCW, or  
2 in nonsubsidiary insurance affiliates that are subject to this chapter,  
3 are exempt from this requirement; and

4 (vii) Any material transactions, specified by rule, (~~that~~) which  
5 the commissioner determines may adversely affect the interests of the  
6 insurer's policyholders.

7 ~~((Nothing contained in this section authorizes or permits a))~~ This  
8 subsection does not authorize or permit any transaction (~~that~~) which,  
9 in the case of an insurer not a member of the same insurance holding  
10 company system, would be otherwise contrary to law.

11 (c) A domestic insurer may not enter into transactions (~~that~~)  
12 which are part of a plan or series of like transactions with persons  
13 within the insurance holding company system if the purpose of those  
14 separate transactions is to avoid the statutory threshold amount and  
15 thus avoid the review that would occur otherwise. If the commissioner  
16 determines that the separate transactions were entered into over ~~((a))~~  
17 any twelve-month period for that purpose, the commissioner may apply  
18 for an order as described in RCW 48.31B.045(1).

19 (d) The commissioner, in reviewing transactions under (b) of this  
20 subsection, ~~((shall))~~ must consider whether the transactions comply  
21 with the standards set forth in (a) of this subsection and whether they  
22 may adversely affect the interests of policyholders.

23 (e) The commissioner ~~((shall))~~ must be notified within thirty days  
24 of an investment of the domestic insurer in any one corporation if the  
25 total investment in the corporation by the insurance holding company  
26 system exceeds ten percent of the corporation's voting securities.

27 (2)(a) ~~((No))~~ A domestic insurer may not pay an extraordinary  
28 dividend or make any other extraordinary distribution to its  
29 shareholders until~~((+---(i)))~~ thirty days after the commissioner  
30 declares that he or she has received sufficient notice of the  
31 declaration thereof and has not within that period disapproved the  
32 payment~~((+))~~, or ~~((+i))~~ until the commissioner has approved the  
33 payment within the thirty-day period.

34 (b) For purposes of this section, an extraordinary dividend or  
35 distribution is ~~((a))~~ any dividend or distribution of cash or other  
36 property, whose fair market value~~((r))~~ together with that of other  
37 dividends or distributions made within the ~~((period of))~~ preceding



1 twelve (~~consecutive~~) months (~~ending on the date on which the~~  
2 ~~proposed dividend is scheduled for payment or distribution,~~) exceeds  
3 the greater of:

4 (i) Ten percent of the (~~company's~~) insurer's surplus as regards  
5 policyholders or net worth as of (~~the 31st day of the previous~~)  
6 December next preceding; or

7 (ii) The net gain from operations of the (~~company~~) insurer, if  
8 the (~~company~~) insurer is a life insurance company, or the net income  
9 if the company is not a life insurance company, for the twelve month  
10 period ending (~~the 31st day of the previous~~) December next preceding,  
11 but does not include pro rata distributions of any class of the  
12 (~~company's~~) insurer's own securities.

13 (c) Notwithstanding any other provision of law, an insurer may  
14 declare an extraordinary dividend or distribution that is conditional  
15 upon the commissioner's approval. The declaration confers no rights  
16 upon shareholders until: (i) The commissioner has approved the payment  
17 of the dividend or distribution; or (ii) the commissioner has not  
18 disapproved the payment within the thirty-day period referred to in (a)  
19 of this subsection.

20 (3) For purposes of this chapter, in determining whether an  
21 insurer's surplus as regards policyholders is reasonable in relation to  
22 the insurer's outstanding liabilities and adequate to its financial  
23 needs, the following factors, among others, (~~may~~) must be considered:

24 (a) The size of the insurer as measured by its assets, capital and  
25 surplus, reserves, premium writings, insurance in force, and other  
26 appropriate criteria;

27 (b) The extent to which the insurer's business is diversified among  
28 (~~the~~) several lines of insurance;

29 (c) The number and size of risks insured in each line of business;

30 (d) The extent of the geographical dispersion of the insurer's  
31 insured risks;

32 (e) The nature and extent of the insurer's reinsurance program;

33 (f) The quality, diversification, and liquidity of the insurer's  
34 investment portfolio;

35 (g) The recent past and projected future trend in the size of the  
36 insurer's surplus as regards policyholders;

37 (h) The surplus as regards policyholders maintained by other  
38 comparable insurers;

1 (i) The adequacy of the insurer's reserves;

2 (j) The quality and liquidity of investments in affiliates. The  
3 commissioner may (~~discount~~) treat any such investment (~~or may treat~~  
4 ~~any such investment~~) as a disallowed asset for purposes of determining  
5 the adequacy of surplus as regards policyholders whenever in (~~his or~~  
6 ~~her~~) the judgment of the commissioner the investment so warrants; and

7 (k) The quality of the insurer's earnings and the extent to which  
8 the reported earnings include extraordinary items.

9 (4)(a) Notwithstanding the control of a domestic insurer by any  
10 person, the officers and directors of the insurer are not thereby  
11 relieved of any obligation or liability to which they would otherwise  
12 be subject by law, and the insurer must be managed so as to assure its  
13 separate operating identity consistent with this title.

14 (b) This section does not preclude a domestic insurer from having  
15 or sharing a common management or cooperative or joint use of  
16 personnel, property, or services with one or more other persons under  
17 arrangements meeting the standards of subsection (1)(a) of this  
18 section.

19 (c) At least one-third of a domestic insurer's directors and at  
20 least one-third of the members of each committee of the insurer's board  
21 of directors must be persons who are not: (i) Officers or employees of  
22 the insurer or of any entity that controls, is controlled by, or is  
23 under common control with the insurer; or (ii) beneficial owners of a  
24 controlling interest in the voting securities of the insurer or of an  
25 entity that controls, is controlled by, or is under common control with  
26 the insurer. A quorum for transacting business at a meeting of the  
27 insurer's board of directors or any committee of the board of directors  
28 must include at least one person with the qualifications described in  
29 (a) of this subsection.

30 (d)(i) For a for-profit person, the board of directors of a  
31 domestic insurer shall establish one or more committees comprised  
32 solely of directors who are not officers or employees of the insurer or  
33 of any entity controlling, controlled by, or under common control with  
34 the insurer and who are not beneficial owners of a controlling interest  
35 in the voting stock of the insurer or any such entity. The committee  
36 or committees have responsibility for nominating candidates for  
37 director for election by shareholders or policyholders, evaluating the

1 performance of officers deemed to be principal officers of the insurer,  
2 and recommending to the board of directors the selection and  
3 compensation of the principal officers.

4 (ii) For a nonprofit person, the board of directors of a domestic  
5 insurer shall establish one or more committees comprised solely of  
6 directors who are not officers or employees of the insurer or of any  
7 entity controlling, controlled by, or under common control with the  
8 insurer. The committee or committees have responsibility for  
9 nominating candidates for director for election, evaluating the  
10 performance of officers deemed to be principal officers of the insurer,  
11 and recommending to the board of directors the selection and  
12 compensation of the principal officers.

13 (e) The provisions of (c) and (d) of this subsection do not apply  
14 to a domestic insurer if the person controlling the insurer has a board  
15 of directors and committees thereof that meet the requirements of (c)  
16 and (d) of this subsection with respect to such controlling entity.

17 (f) An insurer may make application to the commissioner for a  
18 waiver from the requirements of this subsection, if the insurer's  
19 annual direct written and assumed premium, excluding premiums reinsured  
20 with the federal crop insurance corporation and federal flood program,  
21 is less than three hundred million dollars. An insurer may also make  
22 application to the commissioner for a waiver from the requirements of  
23 this subsection based upon unique circumstances. The commissioner may  
24 consider various factors including, but not limited to, the type of  
25 business entity, volume of business written, availability of qualified  
26 board members, or the ownership or organizational structure of the  
27 entity.

28 **Sec. 7.** RCW 48.31B.035 and 1993 c 462 s 8 are each amended to read  
29 as follows:

30 (1) Subject to the limitation contained in this section and in  
31 addition to the powers that the commissioner has under chapter 48.03  
32 RCW relating to the examination of insurers, the commissioner (~~also~~  
33 ~~may order an insurer registered under RCW 48.31B.025 to produce such~~  
34 ~~records, books, or other information papers in the possession of the~~  
35 ~~insurer or its affiliates as are reasonably necessary to ascertain the~~  
36 ~~financial condition of the insurer or to determine compliance with this~~  
37 ~~title. If the insurer fails to comply with the order, the commissioner~~

1 ~~may examine the affiliates to obtain the information~~) has the power to  
2 examine any insurer registered under RCW 48.31B.025 and its affiliates  
3 to ascertain the financial condition of the insurer, including the  
4 enterprise risk to the insurer by the ultimate controlling party, or by  
5 any entity or combination of entities within the insurance holding  
6 company system, or by the insurance holding company system on a  
7 consolidated basis.

8 (2)(a) The commissioner may order any insurer registered under RCW  
9 48.31B.025 to produce such records, books, or other information papers  
10 in the possession of the insurer or its affiliates as are reasonably  
11 necessary to determine compliance with this title.

12 (b) To determine compliance with this title, the commissioner may  
13 order any insurer registered under RCW 48.31B.025 to produce  
14 information not in the possession of the insurer if the insurer can  
15 obtain access to such information pursuant to contractual  
16 relationships, statutory obligations, or other method. In the event  
17 the insurer cannot obtain the information requested by the  
18 commissioner, the insurer shall provide the commissioner a detailed  
19 explanation of the reason that the insurer cannot obtain the  
20 information and the identity of the holder of information. Whenever it  
21 appears to the commissioner that the detailed explanation is without  
22 merit, the commissioner may require, after notice and hearing, the  
23 insurer to pay a fine of ten thousand dollars for each day's delay, or  
24 may suspend or revoke the insurer's license. The commissioner shall  
25 transfer the fine collected under this section to the state treasurer  
26 for deposit into the general fund.

27 (3) The commissioner may retain at the registered insurer's expense  
28 such attorneys, actuaries, accountants, and other experts not otherwise  
29 a part of the commissioner's staff as are reasonably necessary to  
30 assist in the conduct of the examination under subsection (1) of this  
31 section. Any persons so retained are under the direction and control  
32 of the commissioner and shall act in a purely advisory capacity.

33 ~~((+3))~~ (4) Notwithstanding the provisions under RCW 48.03.060,  
34 each registered insurer producing for examination records, books, and  
35 papers under subsection (1) of this section ~~((are))~~ is liable for and  
36 ~~((shall))~~ must pay the expense of the examination ~~((in accordance with~~  
37 RCW 48.03.060)).

1       (5) In the event the insurer fails to comply with an order, the  
2 commissioner has the power to examine the affiliates to obtain the  
3 information. The commissioner also has the power to issue subpoenas,  
4 to administer oaths, and to examine under oath any person for purposes  
5 of determining compliance with this section. Upon the failure or  
6 refusal of any person to obey a subpoena, the commissioner may petition  
7 a court of competent jurisdiction, and upon proper showing, the court  
8 may enter an order compelling the witness to appear and testify or  
9 produce documentary evidence. Failure to obey the court order is  
10 punishable as contempt of court. Every person is required to attend as  
11 a witness at the place specified in the subpoena, when subpoenaed,  
12 anywhere within the state. Every person is entitled to the same fees  
13 and mileage, if claimed, as a witness as provided in RCW 48.03.070.

14       NEW SECTION. Sec. 8. A new section is added to chapter 48.31B RCW  
15 to read as follows:

16       (1) With respect to any insurer registered under RCW 48.31B.025,  
17 and in accordance with subsection (3) of this section, the commissioner  
18 has the power to participate in a supervisory college for any domestic  
19 insurer that is part of an insurance holding company system with  
20 international operations in order to determine compliance by the  
21 insurer with this title. The powers of the commissioner with respect  
22 to supervisory colleges include, but are not limited to, the following:

- 23       (a) Initiating the establishment of a supervisory college;
- 24       (b) Clarifying the membership and participation of other  
25 supervisors in the supervisory college;
- 26       (c) Clarifying the functions of the supervisory college and the  
27 role of other regulators, including the establishment of a group-wide  
28 supervisor;
- 29       (d) Coordinating the ongoing activities of the supervisory college,  
30 including planning meetings, supervisory activities, and processes for  
31 information sharing; and
- 32       (e) Establishing a crisis management plan.

33       (2) Each registered insurer subject to this section is liable for  
34 and must pay the reasonable expenses of the commissioner's  
35 participation in a supervisory college in accordance with subsection  
36 (3) of this section, including reasonable travel expenses. For  
37 purposes of this section, a supervisory college may be convened as

1 either a temporary or permanent forum for communication and cooperation  
2 between the regulators charged with the supervision of the insurer or  
3 its affiliates, and the commissioner may establish a regular assessment  
4 to the insurer for the payment of these expenses.

5 (3) In order to assess the business strategy, financial position,  
6 legal and regulatory position, risk exposure, risk management, and  
7 governance processes, and as part of the examination of individual  
8 insurers in accordance with RCW 48.31B.035, the commissioner may  
9 participate in a supervisory college with other regulators charged with  
10 supervision of the insurer or its affiliates, including other state,  
11 federal, and international regulatory agencies. The commissioner may  
12 enter into agreements in accordance with section 9(3) of this act  
13 providing the basis for cooperation between the commissioner and the  
14 other regulatory agencies, and the activities of the supervisory  
15 college. This section does not delegate to the supervisory college the  
16 authority of the commissioner to regulate or supervise the insurer or  
17 its affiliates within its jurisdiction.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.31B RCW  
19 to read as follows:

20 (1)(a) Documents, materials, or other information in the possession  
21 or control of the commissioner that are obtained by or disclosed to the  
22 commissioner or any other person in the course of an examination or  
23 investigation made pursuant to RCW 48.31B.035 and all information  
24 reported pursuant to RCW 48.31B.015(2) (l) and (m), 48.31B.025,  
25 48.31B.030, and section 8 of this act are confidential by law and  
26 privileged, are not subject to chapter 42.56 RCW, are not subject to  
27 subpoena, and are not subject to discovery or admissible in evidence in  
28 any private civil action. However, the commissioner is authorized to  
29 use the documents, materials, or other information in the furtherance  
30 of any regulatory or legal action brought as a part of the  
31 commissioner's official duties. The commissioner shall not otherwise  
32 make the documents, materials, or other information public without the  
33 prior written consent of the insurer to which it pertains, unless the  
34 commissioner, after giving the insurer and its affiliates who would be  
35 affected thereby notice and opportunity to be heard, determines that  
36 the interest of policyholders, shareholders or the public is served the  
37 publication thereof. If the commissioner determines that the interest

1 of policyholders, shareholders, or the public is served by the  
2 publication of such documents, materials, or other information,  
3 submitted under RCW 48.31B.025(12) or an agreement submitted by an  
4 insurer in conjunction with a filing under RCW 48.31B.030(1)(b), the  
5 commissioner may publish all or any part in such manner as may be  
6 deemed appropriate provided notification is made to the party that  
7 produced the documents, materials, or other information at least five  
8 business days before such disclosure. The notified party may seek  
9 injunctive relief through expedited arbitration as provided for under  
10 (b) of this subsection to prevent disclosure of any documents,  
11 materials, or information it believes is confidential or privileged.

12 (b)(i) Any demand for arbitration shall be delivered by certified  
13 mail return receipt requested, and by ordinary first-class mail. The  
14 party initiating the arbitration shall address the notice to the  
15 address last known to the initiating party in the exercise of  
16 reasonable diligence, and also, for any entity which is required to  
17 have a registered agent in the state of Washington, to the address of  
18 the registered agent. Demand for arbitration is deemed effective three  
19 days after the date deposited in the mail.

20 (ii) All disputes shall be heard by one qualified arbitrator,  
21 unless the parties agree to use three arbitrators. If three  
22 arbitrators are used, one shall be appointed by each of the disputing  
23 parties and the first two arbitrators shall appoint the third, who will  
24 chair the panel. The parties shall select the identity and number of  
25 the arbitrator or arbitrators after the demand for arbitration is made.  
26 If, within ten days after the effective date of the demand for  
27 arbitration, the parties fail to agree on an arbitrator or the agreed  
28 number of arbitrators fail to be appointed, then an arbitrator or  
29 arbitrators shall be appointed under RCW 7.04A.110 by the presiding  
30 judge of the superior court in Thurston county.

31 (iii) In any arbitration, at least one arbitrator must be a lawyer  
32 or retired judge. Any additional arbitrator must be either a lawyer or  
33 retired judge or a person who has experience with insurance industry  
34 standards and practices. No person may serve as an arbitrator in any  
35 arbitration in which that person has any past or present financial or  
36 personal interest.

37 (iv) The arbitration hearing must be conducted in a manner that  
38 permits full, fair, and expeditious presentation of the case by both

1 parties. The arbitrator is bound by the law of Washington state.  
2 Parties may be, but are not required to be, represented by attorneys.  
3 The arbitrator may permit discovery to ensure a fair hearing, but may  
4 limit the scope or manner of discovery for good cause to avoid  
5 excessive delay and costs to the parties. The parties and the  
6 arbitrator shall use all reasonable efforts to complete the arbitration  
7 within thirty days of the effective date of the demand for arbitration.

8 (v) Except as otherwise set forth in this section, arbitration  
9 shall be conducted under chapter 7.04A RCW. The expenses of witnesses  
10 including expert witnesses shall be paid by the party producing the  
11 witnesses. All other expenses of arbitration shall be borne equally by  
12 the parties, unless all parties agree otherwise or unless the  
13 arbitrator awards expenses or any part thereof to any specified party  
14 or parties. The parties shall pay the fees of the arbitrator as and  
15 when specified by the arbitrator.

16 (vi) The arbitration decision shall be in writing and must set  
17 forth findings of fact and conclusions of law that support the  
18 decision.

19 (vii) Notwithstanding the provisions under RCW 7.04A.280, the  
20 arbitration decision shall be binding on all parties and shall not be  
21 appealable.

22 (2) Neither the commissioner nor any person who received documents,  
23 materials, or other information while acting under the authority of the  
24 commissioner or with whom such documents, materials, or other  
25 information are shared pursuant to this chapter is permitted or may be  
26 required to testify in any private civil action concerning any  
27 confidential documents, materials, or information subject to subsection  
28 (1) of this section.

29 (3) In order to assist in the performance of the commissioner's  
30 duties, the commissioner:

31 (a) May share documents, materials, or other information, including  
32 the confidential and privileged documents, materials, or information  
33 subject to subsection (1) of this section, with other state, federal,  
34 and international regulatory agencies, with the national association of  
35 insurance commissioners and its affiliates and subsidiaries, with the  
36 international association of insurance supervisors and the bank for  
37 international settlements and its affiliates and subsidiaries, and with  
38 state, federal, and international law enforcement authorities,



1 including members of any supervisory college described in section 8 of  
2 this act, provided the recipient agrees in writing to maintain the  
3 confidentiality and privileged status of the document, material, or  
4 other information, and has verified in writing the legal authority to  
5 maintain confidentiality;

6 (b) Notwithstanding (a) of this subsection, may only share  
7 confidential and privileged documents, material, or information  
8 reported pursuant to RCW 48.31B.025(12) with commissioners of states  
9 having statutes or rules substantially similar to subsection (1) of  
10 this section and who have agreed in writing not to disclose such  
11 information;

12 (c) May receive documents, materials, or information, including  
13 otherwise confidential and privileged documents, materials, or  
14 information from the national association of insurance commissioners  
15 and its affiliates and subsidiaries, the international association of  
16 insurance supervisors and the bank for international settlements and  
17 its affiliates and subsidiaries, and from regulatory and law  
18 enforcement officials of other foreign or domestic jurisdictions, and  
19 shall maintain as confidential or privileged any document, material, or  
20 information received with notice or the understanding that it is  
21 confidential or privileged under the laws of the jurisdiction that is  
22 the source of the document, material, or information; and

23 (d) Shall enter into written agreements with the national  
24 association of insurance commissioners governing sharing and use of  
25 information provided pursuant to this chapter consistent with this  
26 subsection that shall:

27 (i) Specify procedures and protocols regarding the confidentiality  
28 and security of information shared with the national association of  
29 insurance commissioners and its affiliates and subsidiaries pursuant to  
30 this chapter, including procedures and protocols for sharing by the  
31 national association of insurance commissioners with other state,  
32 federal, or international regulators including the international  
33 association of insurance supervisors and the bank for international  
34 settlements and its affiliates and subsidiaries;

35 (ii) Specify that ownership of information shared with the national  
36 association of insurance commissioners and its affiliates and  
37 subsidiaries pursuant to this chapter remains with the commissioner and

1 the national association of insurance commissioners' use of the  
2 information is subject to the direction of the commissioner;

3 (iii) Require prompt notice to be given to an insurer whose  
4 confidential information in the possession of the national association  
5 of insurance commissioners pursuant to this chapter is subject to a  
6 request or subpoena to the national association of insurance  
7 commissioners for disclosure or production; and

8 (iv) Require the national association of insurance commissioners  
9 and its affiliates and subsidiaries to consent to intervention by an  
10 insurer in any judicial or administrative action in which the national  
11 association of insurance commissioners and its affiliates and  
12 subsidiaries may be required to disclose confidential information about  
13 the insurer shared with the national association of insurance  
14 commissioners and its affiliates and subsidiaries pursuant to this  
15 chapter.

16 (4) The sharing of information by the commissioner pursuant to this  
17 chapter does not constitute a delegation of regulatory authority or  
18 rule making, and the commissioner is solely responsible for the  
19 administration, execution, and enforcement of this chapter.

20 (5) No waiver of any applicable privilege or claim of  
21 confidentiality in the documents, materials, or information shall occur  
22 as a result of disclosure to the commissioner under this section or as  
23 a result of sharing as authorized in subsection (3) of this section.

24 (6) Documents, materials, or other information in the possession or  
25 control of the national association of insurance commissioners pursuant  
26 to this chapter are confidential by law and privileged, are not subject  
27 to chapter 42.56 RCW, are not subject to subpoena, and are not subject  
28 to discovery or admissible in evidence in any private civil action.

29 **Sec. 10.** RCW 48.31B.040 and 1993 c 462 s 9 are each amended to  
30 read as follows:

31 The commissioner may, (~~upon notice and opportunity for all~~  
32 ~~interested persons to be heard, adopt rules and issue orders that are~~  
33 ~~necessary to carry out~~)) in accordance with the administrative  
34 procedure act, chapter 34.05 RCW, adopt rules interpreting and  
35 implementing this chapter.

1           **Sec. 11.** RCW 48.31B.050 and 1993 c 462 s 11 are each amended to  
2 read as follows:

3           (1) The commissioner shall require, after notice and hearing, an  
4 insurer failing, without just cause, to file a registration statement  
5 as required in this chapter, to pay a penalty of not more than ten  
6 thousand dollars per day. The maximum penalty under this section is  
7 one million dollars. The commissioner may reduce the penalty if the  
8 insurer demonstrates to the commissioner that the imposition of the  
9 penalty would constitute a financial hardship to the insurer. The  
10 commissioner shall pay a fine collected under this section to the state  
11 treasurer for the account of the general fund.

12           (2) Every director or officer of an insurance holding company  
13 system who knowingly violates this chapter, or participates in, or  
14 assents to, or who knowingly permits an officer or agent of the insurer  
15 to engage in transactions or make investments that have not been  
16 properly reported or submitted under RCW 48.31B.025(1) or  
17 48.31B.030(1)(b) or (2), or that violate this chapter, shall pay, in  
18 their individual capacity, a civil forfeiture of not more than ten  
19 thousand dollars per violation, after notice and hearing before the  
20 commissioner. In determining the amount of the civil forfeiture, the  
21 commissioner shall take into account the appropriateness of the  
22 forfeiture with respect to the gravity of the violation, the history of  
23 previous violations, and such other matters as justice may require.

24           (3) Whenever it appears to the commissioner that an insurer subject  
25 to this chapter or a director, officer, employee, or agent of the  
26 insurer has engaged in a transaction or entered into a contract that is  
27 subject to RCW 48.31B.030 and that would not have been approved had  
28 approval been requested, the commissioner may order the insurer to  
29 cease and desist immediately any further activity under that  
30 transaction or contract. After notice and hearing the commissioner may  
31 also order the insurer to void any such contracts and restore the  
32 status quo if that action is in the best interest of the policyholders,  
33 creditors, or the public.

34           (4) Whenever it appears to the commissioner that an insurer or a  
35 director, officer, employee, or agent of the insurer has committed a  
36 willful violation of this chapter, the commissioner may refer the  
37 matter to the prosecuting attorney of Thurston county or the county in  
38 which the principal office of the insurer is located. An insurer that

1 willfully violates this chapter may be fined not more than one million  
2 dollars. Any individual who willfully violates this chapter may be  
3 fined in his or her individual capacity not more than ten thousand  
4 dollars, or be imprisoned for not more than three years, or both.

5 (5) An officer, director, or employee of an insurance holding  
6 company system who willfully and knowingly subscribes to or makes or  
7 causes to be made a false statement or false report or false filing  
8 with the intent to deceive the commissioner in the performance of his  
9 or her duties under this chapter, upon conviction thereof, shall be  
10 imprisoned for not more than three years or fined not more than ten  
11 thousand dollars or both. The officer, director, or employee upon whom  
12 the fine is imposed shall pay the fine in his or her individual  
13 capacity.

14 (6) Whenever it appears to the commissioner that any person has  
15 committed a violation of RCW 48.31B.015 and which prevents the full  
16 understanding of the enterprise risk to the insurer by affiliates or by  
17 the insurance holding company system, the violation may serve as an  
18 independent basis for disapproving dividends or distributions and for  
19 placing the insurer under an order of supervision in accordance with  
20 RCW 48.31.400.

21 **Sec. 12.** RCW 48.31B.070 and 1993 c 462 s 15 are each amended to  
22 read as follows:

23 (1) A person aggrieved by an act, determination, rule, order, or  
24 any other action of the commissioner under this chapter may proceed in  
25 accordance with the administrative procedure act, chapter 34.05 RCW.

26 (2) A person aggrieved by a failure of the commissioner to act or  
27 make a determination required by this chapter may petition the  
28 commissioner under the procedure described in ((RCW 34.05.330)) the  
29 administrative procedure act, chapter 34.05 RCW.

30 **Sec. 13.** RCW 42.56.400 and 2013 c 277 s 5 and 2013 c 65 s 5 are  
31 each reenacted and amended to read as follows:

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

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

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

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

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

12 (5) Information provided under RCW 48.05.510 through 48.05.535,  
13 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
14 through 48.46.625;

15 (6) Examination reports and information obtained by the department  
16 of financial institutions from banks under RCW 30.04.075, from savings  
17 banks under RCW 32.04.220, from savings and loan associations under RCW  
18 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
19 and sellers under RCW 31.45.030(3), and from securities brokers and  
20 investment advisers under RCW 21.20.100, all of which is confidential  
21 and privileged information;

22 (7) Information provided to the insurance commissioner under RCW  
23 48.110.040(3);

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

27 (9) (~~Confidential proprietary and trade secret information~~  
28 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~  
29 ~~and 48.31C.070~~) Documents, materials, or information obtained by the  
30 insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025,  
31 48.31B.030, 48.31B.035, and section 8 of this act, all of which are  
32 confidential and privileged;

33 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
34 7.70.140 that, alone or in combination with any other data, may reveal  
35 the identity of a claimant, health care provider, health care facility,  
36 insuring entity, or self-insurer involved in a particular claim or a  
37 collection of claims. For the purposes of this subsection:

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

1 (b) "Health care facility" has the same meaning as in RCW  
2 48.140.010(6).

3 (c) "Health care provider" has the same meaning as in RCW  
4 48.140.010(7).

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

6 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);  
7 (11) Documents, materials, or information obtained by the insurance  
8 commissioner under RCW 48.135.060;

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

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

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

15 (15) Documents, materials, or information obtained by the insurance  
16 commissioner under RCW 48.17.595;

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

19 (17) Documents, materials, or information obtained by the insurance  
20 commissioner in the commissioner's capacity as receiver under RCW  
21 48.31.025 and 48.99.017, which are records under the jurisdiction and  
22 control of the receivership court. The commissioner is not required to  
23 search for, log, produce, or otherwise comply with the public records  
24 act for any records that the commissioner obtains under chapters 48.31  
25 and 48.99 RCW in the commissioner's capacity as a receiver, except as  
26 directed by the receivership court;

27 (18) Documents, materials, or information obtained by the insurance  
28 commissioner under RCW 48.13.151;

29 (19) Data, information, and documents provided by a carrier  
30 pursuant to section 1, chapter 172, Laws of 2010;

31 (20) Information in a filing of usage-based insurance about the  
32 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

33 (21) Data, information, and documents, other than those described  
34 in RCW 48.02.210(2), that are submitted to the office of the insurance  
35 commissioner by an entity providing health care coverage pursuant to  
36 RCW 28A.400.275 and 48.02.210; (~~and~~)

37 (22) Data, information, and documents obtained by the insurance  
38 commissioner under RCW 48.29.017; and

1 (23) Information not subject to public inspection or public  
2 disclosure under RCW 48.43.730(5).

3 **Sec. 14.** RCW 42.56.400 and 2013 c 65 s 5 are each amended to read  
4 as follows:

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

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

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

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

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

21 (5) Information provided under RCW 48.05.510 through 48.05.535,  
22 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
23 through 48.46.625;

24 (6) Examination reports and information obtained by the department  
25 of financial institutions from banks under RCW 30.04.075, from savings  
26 banks under RCW 32.04.220, from savings and loan associations under RCW  
27 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
28 and sellers under RCW 31.45.030(3), and from securities brokers and  
29 investment advisers under RCW 21.20.100, all of which is confidential  
30 and privileged information;

31 (7) Information provided to the insurance commissioner under RCW  
32 48.110.040(3);

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

36 (9) ~~((Confidential proprietary and trade secret information  
37 provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~

1 ~~and 48.31C.070~~) Documents, materials, or information obtained by the  
2 insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025,  
3 48.31B.030, 48.31B.035, and section 8 of this act, all of which are  
4 confidential and privileged;

5 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
6 7.70.140 that, alone or in combination with any other data, may reveal  
7 the identity of a claimant, health care provider, health care facility,  
8 insuring entity, or self-insurer involved in a particular claim or a  
9 collection of claims. For the purposes of this subsection:

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

11 (b) "Health care facility" has the same meaning as in RCW  
12 48.140.010(6).

13 (c) "Health care provider" has the same meaning as in RCW  
14 48.140.010(7).

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

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

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

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

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

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

25 (15) Documents, materials, or information obtained by the insurance  
26 commissioner under RCW 48.17.595;

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

29 (17) Documents, materials, or information obtained by the insurance  
30 commissioner in the commissioner's capacity as receiver under RCW  
31 48.31.025 and 48.99.017, which are records under the jurisdiction and  
32 control of the receivership court. The commissioner is not required to  
33 search for, log, produce, or otherwise comply with the public records  
34 act for any records that the commissioner obtains under chapters 48.31  
35 and 48.99 RCW in the commissioner's capacity as a receiver, except as  
36 directed by the receivership court;

37 (18) Documents, materials, or information obtained by the insurance  
38 commissioner under RCW 48.13.151;



1 (19) Data, information, and documents provided by a carrier  
2 pursuant to section 1, chapter 172, Laws of 2010;

3 (20) Information in a filing of usage-based insurance about the  
4 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

5 (21) Data, information, and documents, other than those described  
6 in RCW 48.02.210(2), that are submitted to the office of the insurance  
7 commissioner by an entity providing health care coverage pursuant to  
8 RCW 28A.400.275 and 48.02.210; and

9 (22) Data, information, and documents obtained by the insurance  
10 commissioner under RCW 48.29.017.

11 **Sec. 15.** RCW 48.02.065 and 2007 c 126 s 1 are each amended to read  
12 as follows:

13 (1) Documents, materials, or other information as described in  
14 either subsection (5) or (6), or both, of this section are confidential  
15 by law and privileged, are not subject to public disclosure under  
16 chapter 42.56 RCW, and are not subject to subpoena directed to the  
17 commissioner or any person who received documents, materials, or other  
18 information while acting under the authority of the commissioner. The  
19 commissioner is authorized to use such documents, materials, or other  
20 information in the furtherance of any regulatory or legal action  
21 brought as a part of the commissioner's official duties. The  
22 confidentiality and privilege created by this section and RCW  
23 42.56.400(~~(+9)~~) (8) applies only to the commissioner, any person  
24 acting under the authority of the commissioner, the national  
25 association of insurance commissioners and its affiliates and  
26 subsidiaries, regulatory and law enforcement officials of other states  
27 and nations, the federal government, and international authorities.

28 (2) Neither the commissioner nor any person who received documents,  
29 materials, or other information while acting under the authority of the  
30 commissioner is permitted or required to testify in any private civil  
31 action concerning any confidential and privileged documents, materials,  
32 or information subject to subsection (1) of this section.

33 (3) The commissioner:

34 (a) May share documents, materials, or other information, including  
35 the confidential and privileged documents, materials, or information  
36 subject to subsection (1) of this section, with (i) the national  
37 association of insurance commissioners and its affiliates and

1 subsidiaries, and (ii) regulatory and law enforcement officials of  
2 other states and nations, the federal government, and international  
3 authorities, if the recipient agrees to maintain the confidentiality  
4 and privileged status of the document, material, or other information;

5 (b) May receive documents, materials, or information, including  
6 otherwise either confidential or privileged, or both, documents,  
7 materials, or information, from (i) the national association of  
8 insurance commissioners and its affiliates and subsidiaries, and (ii)  
9 regulatory and law enforcement officials of other states and nations,  
10 the federal government, and international authorities and shall  
11 maintain as confidential and privileged any document, material, or  
12 information received that is either confidential or privileged, or  
13 both, under the laws of the jurisdiction that is the source of the  
14 document, material, or information; and

15 (c) May enter into agreements governing the sharing and use of  
16 information consistent with this subsection.

17 (4) No waiver of an existing privilege or claim of confidentiality  
18 in the documents, materials, or information may occur as a result of  
19 disclosure to the commissioner under this section or as a result of  
20 sharing as authorized in subsection (3) of this section.

21 (5) Documents, materials, or information, which is either  
22 confidential or privileged, or both, which has been provided to the  
23 commissioner by (a) the national association of insurance commissioners  
24 and its affiliates and subsidiaries, (b) regulatory or law enforcement  
25 officials of other states and nations, the federal government, or  
26 international authorities, or (c) agencies of this state, is  
27 confidential and privileged only if the documents, materials, or  
28 information is protected from disclosure by the applicable laws of the  
29 jurisdiction that is the source of the document, material, or  
30 information.

31 (6) Working papers, documents, materials, or information produced  
32 by, obtained by, or disclosed to the commissioner or any other person  
33 in the course of a financial or market conduct examination, or in the  
34 course of financial analysis or market conduct desk audit, are not  
35 required to be disclosed by the commissioner unless cited by the  
36 commissioner in connection with an agency action as defined in RCW  
37 34.05.010(3). The commissioner shall notify a party that produced the  
38 documents, materials, or information five business days before

1 disclosure in connection with an agency action. The notified party may  
2 seek injunctive relief in any Washington state superior court to  
3 prevent disclosure of any documents, materials, or information it  
4 believes is confidential or privileged. In civil actions between  
5 private parties or in criminal actions, disclosure to the commissioner  
6 under this section does not create any privilege or claim of  
7 confidentiality or waive any existing privilege or claim of  
8 confidentiality.

9 (7)(a) After receipt of a public disclosure request, the  
10 commissioner shall disclose the documents, materials, or information  
11 under subsection (6) of this section that relate to a financial or  
12 market conduct examination undertaken as a result of a proposed change  
13 of control of a nonprofit or mutual health insurer governed in whole or  
14 in part by chapter 48.31B (~~or 48.31C~~) RCW.

15 (b) The commissioner is not required to disclose the documents,  
16 materials, or information in (a) of this subsection if:

17 (i) The documents, materials, or information are otherwise  
18 privileged or exempted from public disclosure; or

19 (ii) The commissioner finds that the public interest in disclosure  
20 of the documents, materials, or information is outweighed by the public  
21 interest in nondisclosure in that particular instance.

22 (8) Any person may petition a Washington state superior court to  
23 allow inspection of information exempt from public disclosure under  
24 subsection (6) of this section when the information is connected to  
25 allegations of negligence or malfeasance by the commissioner related to  
26 a financial or market conduct examination. The court shall conduct an  
27 in-camera review after notifying the commissioner and every party that  
28 produced the information. The court may order the commissioner to  
29 allow the petitioner to have access to the information provided the  
30 petitioner maintains the confidentiality of the information. The  
31 petitioner must not disclose the information to any other person,  
32 except upon further order of the court. After conducting a regular  
33 hearing, the court may order that the information can be disclosed  
34 publicly if the court finds that there is a public interest in the  
35 disclosure of the information and the exemption of the information from  
36 public disclosure is clearly unnecessary to protect any individual's  
37 right of privacy or any vital governmental function.

1       **Sec. 16.** RCW 48.13.061 and 2011 c 188 s 7 are each amended to read  
2 as follows:

3       The following classes of investments may be counted for the  
4 purposes specified in RCW 48.13.101, whether they are made directly or  
5 as a participant in a partnership, joint venture, or limited liability  
6 company. Investments in partnerships, joint ventures, and limited  
7 liability companies are authorized investments only pursuant to  
8 subsection (12) of this section:

9       (1) Cash in the direct possession of the insurer or on deposit with  
10 a financial institution regulated by any federal or state agency of the  
11 United States;

12       (2) Bonds, debt-like preferred stock, and other evidences of  
13 indebtedness of governmental units in the United States or Canada, or  
14 the instrumentalities of the governmental units, or private business  
15 entities domiciled in the United States or Canada, including asset-  
16 backed securities and securities valuation office listed mutual funds;

17       (3) Loans secured by first mortgages, first trust deeds, or other  
18 first security interests in real property located in the United States  
19 or Canada or secured by insurance against default issued by a  
20 government insurance corporation of the United States or Canada or by  
21 an insurer authorized to do business in this state;

22       (4) Common stock or equity-like preferred stock or equity interests  
23 in any United States or Canadian business entity, or shares of mutual  
24 funds registered with the securities and exchange commission of the  
25 United States under the investment company act of 1940, other than  
26 securities valuation office listed mutual funds, and, subsidiaries, as  
27 defined in RCW 48.31B.005 (~~or 48.31C.010~~), engaged exclusively in the  
28 following businesses:

29       (a) Acting as an insurance producer, surplus line broker, or title  
30 insurance agent for its parent or for any of its parent's insurer  
31 subsidiaries or affiliates;

32       (b) Investing, reinvesting, or trading in securities or acting as  
33 a securities broker or dealer for its own account, that of its parent,  
34 any subsidiary of its parent, or any affiliate or subsidiary;

35       (c) Rendering management, sales, or other related services to any  
36 investment company subject to the federal investment company act of  
37 1940, as amended;

38       (d) Rendering investment advice;

1 (e) Rendering services related to the functions involved in the  
2 operation of an insurance business including, but not limited to,  
3 actuarial, loss prevention, safety engineering, data processing,  
4 accounting, claims appraisal, and collection services;

5 (f) Acting as administrator of employee welfare benefit and pension  
6 plans for governments, government agencies, corporations, or other  
7 organizations or groups;

8 (g) Ownership and management of assets which the parent could  
9 itself own and manage: PROVIDED, that the aggregate investment by the  
10 insurer and its subsidiaries acquired pursuant to this subsection  
11 (4)(g) shall not exceed the limitations otherwise applicable to such  
12 investments by the parent;

13 (h) Acting as administrative agent for a government instrumentality  
14 which is performing an insurance function or is responsible for a  
15 health or welfare program;

16 (i) Financing of insurance premiums;

17 (j) Any other business activity reasonably ancillary to an  
18 insurance business;

19 (k) Owning one or more subsidiary;

20 (i) Insurers, health care service contractors, or health  
21 maintenance organizations to the extent permitted by this chapter;

22 (ii) Businesses specified in (a) through (k) of this subsection  
23 inclusive; or

24 (iii) Any combination of such insurers and businesses;

25 (5) Real property necessary for the convenient transaction of the  
26 insurer's business;

27 (6) Real property, together with the fixtures, furniture,  
28 furnishings, and equipment pertaining thereto in the United States or  
29 Canada, which produces or after suitable improvement can reasonably be  
30 expected to produce income;

31 (7) Loans, securities, or other investments of the types described  
32 in subsections (1) through (6) of this section in national association  
33 of insurance commissioners securities valuation office 1 debt rated  
34 countries other than the United States and Canada;

35 (8) Bonds or other evidences of indebtedness of international  
36 development organizations of which the United States is a member;

37 (9) Loans upon the security of the insurer's own policies in

1 amounts that are adequately secured by the policies and that in no case  
2 exceed the surrender values of the policies;

3 (10) Tangible personal property under contract of sale or lease  
4 under which contractual payments may reasonably be expected to return  
5 the principal of and provide earnings on the investment within its  
6 anticipated useful life;

7 (11) Other investments the commissioner authorizes by rule; and

8 (12) Investments not otherwise permitted by this section, and not  
9 specifically prohibited by statute, to the extent of not more than five  
10 percent of the first five hundred million dollars of the insurer's  
11 admitted assets plus ten percent of the insurer's admitted assets  
12 exceeding five hundred million dollars.

13 **Sec. 17.** RCW 48.97.005 and 2008 c 217 s 75 are each amended to  
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

17 (1) "Accredited state" means a state in which the insurance  
18 department or regulatory agency has qualified as meeting the minimum  
19 financial regulatory standards promulgated and established from time to  
20 time by the National Association of Insurance Commissioners.

21 (2) "Control" or "controlled by" has the meaning ascribed in RCW  
22 48.31B.005((+2)) (3).

23 (3) "Controlled insurer" means a licensed insurer that is  
24 controlled, directly or indirectly, by a broker.

25 (4) "Controlling producer" means a producer who, directly or  
26 indirectly, controls an insurer.

27 (5) "Licensed insurer" or "insurer" means a person, firm,  
28 association, or corporation licensed to transact property and casualty  
29 insurance business in this state. The following, among others, are not  
30 licensed insurers for purposes of this chapter:

31 (a) (~~Risk retention groups as defined in the Superfund Amendments~~  
32 ~~Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the~~  
33 ~~Risk Retention Act, 15 U.S.C. Sec. 3901 et seq. (1982 Supp. 1986), and~~  
34 ~~chapter 48.92 RCW;~~

35 (b)) All residual market pools and joint underwriting  
36 associations; and

1       (~~(c) Captive insurers. For the purposes of this chapter,~~) (b)  
2 captive insurers other than risk retention groups as defined in 15  
3 U.S.C. Sec. 3901 et seq. and 42 U.S.C. Sec. 9671 are insurance  
4 companies owned by another organization(~~(7)~~) whose exclusive purpose is  
5 to insure risks of the parent organization and affiliated companies or,  
6 in the case of groups and associations, insurance organizations owned  
7 by the insureds whose exclusive purpose is to insure risks to member  
8 organizations or group members, or both, and their affiliates.

9       (6) "Producer" means an insurance broker or brokers or any other  
10 person, firm, association, or corporation when, for compensation,  
11 commission, or other thing of value, the person, firm, association, or  
12 corporation acts or aids in any manner in soliciting, negotiating, or  
13 procuring the making of an insurance contract on behalf of an insured  
14 other than the person, firm, association, or corporation.

15       **Sec. 18.** RCW 48.125.140 and 2004 c 260 s 16 are each amended to  
16 read as follows:

17       (1) The commissioner may make an examination of the operations of  
18 any self-funded multiple employer welfare arrangement as often as he or  
19 she deems necessary in order to carry out the purposes of this chapter.

20       (2) Every self-funded multiple employer welfare arrangement shall  
21 submit its books and records relating to its operation for financial  
22 condition and market conduct examinations and in every way facilitate  
23 them. For the purpose of examinations, the commissioner may issue  
24 subpoenas, administer oaths, and examine the officers and principals of  
25 the (~~(self-funded)~~) self-funded multiple employer welfare  
26 arrangement.

27       (3) The commissioner may elect to accept and rely on audit reports  
28 made by an independent certified public accountant for the self-funded  
29 multiple employer welfare arrangement in the course of that part of the  
30 commissioner's examination covering the same general subject matter as  
31 the audit. The commissioner may incorporate the audit report in his or  
32 her report of the examination.

33       (4)(a) The commissioner may also examine any affiliate of the self-  
34 funded multiple employer welfare arrangement. An examination of an  
35 affiliate is limited to the activities or operations of the affiliate  
36 that may impact the financial position of the arrangement.

1 (b) For the purposes of this section, "affiliate" has the same  
2 meaning as defined in RCW (~~(48.31C.010)~~) 48.31B.005.

3 (5) Whenever an examination is made, all of the provisions of  
4 chapter 48.03 RCW not inconsistent with this chapter shall be  
5 applicable. In lieu of making an examination himself or herself, the  
6 commissioner may, in the case of a foreign self-funded multiple  
7 employer welfare arrangement, accept an examination report of the  
8 applicant by the regulatory official in its state of domicile. In the  
9 case of a domestic self-funded multiple employer welfare arrangement,  
10 the commissioner may accept an examination report of the applicant by  
11 the regulatory official of a state that has already licensed the  
12 arrangement.

13 **Sec. 19.** RCW 48.155.010 and 2010 c 27 s 4 are each amended to read  
14 as follows:

15 The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

17 (1) "Affiliate" means a person that directly, or indirectly through  
18 one or more intermediaries, controls, or is controlled by, or is under  
19 common control with, the person specified.

20 (2) "Commissioner" means the Washington state insurance  
21 commissioner.

22 (3)(a) "Control" or "controlled by" or "under common control with"  
23 means the possession, direct or indirect, of the power to direct or  
24 cause the direction of the management and policies of a person, whether  
25 through the ownership of voting securities, by contract other than a  
26 commercial contract for goods or nonmanagement services, or otherwise,  
27 unless the power is the result of an official position with or  
28 corporate office held by the person.

29 (b) Control exists when any person, directly or indirectly, owns,  
30 controls, holds with the power to vote, or holds proxies representing  
31 ten percent or more of the voting securities of any other person. A  
32 presumption of control may be rebutted by a showing made in the manner  
33 provided by RCW 48.31B.005(~~((+2))~~) (3) and 48.31B.025(11) that control  
34 does not exist in fact. The commissioner may determine, after  
35 furnishing all persons in interest notice and opportunity to be heard  
36 and making specific findings of fact to support the determination, that



1 control exists in fact, notwithstanding the absence of a presumption to  
2 that effect.

3 (4)(a) "Discount plan" means a business arrangement or contract in  
4 which a person or organization, in exchange for fees, dues, charges, or  
5 other consideration, provides or purports to provide discounts to its  
6 members on charges by providers for health care services.

7 (b) "Discount plan" does not include:

8 (i) A plan that does not charge a membership or other fee to use  
9 the plan's discount card;

10 (ii) A patient access program as defined in this chapter;

11 (iii) A medicare prescription drug plan as defined in this chapter;

12 or

13 (iv) A discount plan offered by a health carrier authorized under  
14 chapter 48.20, 48.21, 48.44, or 48.46 RCW.

15 (5)(a) "Discount plan organization" means a person that, in  
16 exchange for fees, dues, charges, or other consideration, provides or  
17 purports to provide access to discounts to its members on charges by  
18 providers for health care services. "Discount plan organization" also  
19 means a person or organization that contracts with providers, provider  
20 networks, or other discount plan organizations to offer discounts on  
21 health care services to its members. This term also includes all  
22 persons that determine the charge to or other consideration paid by  
23 members.

24 (b) "Discount plan organization" does not mean:

25 (i) Pharmacy benefit managers;

26 (ii) Health care provider networks, when the network's only  
27 involvement in discount plans is contracting with the plan to provide  
28 discounts to the plan's members;

29 (iii) Marketers who market the discount plans of discount plan  
30 organizations which are licensed under this chapter as long as all  
31 written communications of the marketer in connection with a discount  
32 plan clearly identify the licensed discount plan organization as the  
33 responsible entity; or

34 (iv) Health carriers, if the discount on health care services is  
35 offered by a health carrier authorized under chapter 48.20, 48.21,  
36 48.44, or 48.46 RCW.

37 (6) "Health care facility" or "facility" has the same meaning as in  
38 RCW 48.43.005(~~(+15+)~~) (22).

1 (7) "Health care provider" or "provider" has the same meaning as in  
2 RCW 48.43.005(~~(+16+)~~) (23).

3 (8) "Health care provider network," "provider network," or  
4 "network" means any network of health care providers, including any  
5 person or entity that negotiates directly or indirectly with a discount  
6 plan organization on behalf of more than one provider to provide health  
7 care services to members.

8 (9) "Health care services" has the same meaning as in RCW  
9 48.43.005(~~(+17+)~~) (24).

10 (10) "Health carrier" or "carrier" has the same meaning as in RCW  
11 48.43.005(~~(+18+)~~) (25).

12 (11) "Marketer" means a person or entity that markets, promotes,  
13 sells, or distributes a discount plan, including a contracted marketing  
14 organization and a private label entity that places its name on and  
15 markets or distributes a discount plan pursuant to a marketing  
16 agreement with a discount plan organization.

17 (12) "Medicare prescription drug plan" means a plan that provides  
18 a medicare part D prescription drug benefit in accordance with the  
19 requirements of the federal medicare prescription drug improvement and  
20 modernization act of 2003.

21 (13) "Member" means any individual who pays fees, dues, charges, or  
22 other consideration for the right to receive the benefits of a discount  
23 plan, but does not include any individual who enrolls in a patient  
24 access program.

25 (14) "Patient access program" means a voluntary program sponsored  
26 by a pharmaceutical manufacturer, or a consortium of pharmaceutical  
27 manufacturers, that provides free or discounted health care products  
28 for no additional consideration directly to low-income or uninsured  
29 individuals either through a discount card or direct shipment.

30 (15) "Person" means an individual, a corporation, a governmental  
31 entity, a partnership, an association, a joint venture, a joint stock  
32 company, a trust, an unincorporated organization, any similar entity,  
33 or any combination of the persons listed in this subsection.

34 (16)(a) "Pharmacy benefit manager" means a person that performs  
35 pharmacy benefit management for a covered entity.

36 (b) For purposes of this subsection, a "covered entity" means an  
37 insurer, a health care service contractor, a health maintenance  
38 organization, or a multiple employer welfare arrangement licensed,

1 certified, or registered under the provisions of this title. "Covered  
2 entity" also means a health program administered by the state as a  
3 provider of health coverage, a single employer that provides health  
4 coverage to its employees, or a labor union that provides health  
5 coverage to its members as part of a collective bargaining agreement.

6 **Sec. 20.** RCW 48.155.015 and 2009 c 175 s 4 are each amended to  
7 read as follows:

8 (1) This chapter applies to all discount plans and all discount  
9 plan organizations doing business in or from this state or that affect  
10 subjects located wholly or in part or to be performed within this  
11 state, and all persons having to do with this business.

12 (2) A discount plan organization that is a health carrier, as  
13 defined under RCW 48.43.005, with a license, certificate of authority,  
14 or registration (~~(under RCW 48.05.030 or chapter 48.31C RCW)~~):

15 (a) Is not required to obtain a license under RCW 48.155.020,  
16 except that any of its affiliates that operate as a discount plan  
17 organization in this state must obtain a license under RCW 48.155.020  
18 and comply with all other provisions of this chapter;

19 (b) Is required to comply with RCW 48.155.060 through 48.155.090  
20 and report, in the form and manner as the commissioner may require, any  
21 of the information described in RCW 48.155.110(2) (b), (c), or (d) that  
22 is not otherwise already reported; and

23 (c) Is subject to RCW 48.155.130 and 48.155.140.

24 NEW SECTION. **Sec. 21.** The following acts or parts of acts are  
25 each repealed:

26 (1) RCW 48.31C.010 (Definitions) and 2001 c 179 s 1;

27 (2) RCW 48.31C.020 (Acquisition of a foreign health carrier--  
28 Preacquisition notification--Review) and 2001 c 179 s 2;

29 (3) RCW 48.31C.030 (Acquisition of a domestic health carrier--  
30 Filing--Review--Jurisdiction of courts) and 2001 c 179 s 3;

31 (4) RCW 48.31C.040 (Registration with commissioner--Information  
32 required--Rule making--Disclaimer of affiliation--Failure to file) and  
33 2001 c 179 s 4;

34 (5) RCW 48.31C.050 (Health carrier subject to registration--  
35 Standards for transactions within a holding company system--Notice to  
36 commissioner--Review) and 2001 c 179 s 5;

- 1 (6) RCW 48.31C.060 (Extraordinary dividends or distributions--  
2 Restrictions--Definition of distribution) and 2001 c 179 s 6;
- 3 (7) RCW 48.31C.070 (Examination of health carriers--Commissioner  
4 may order production of information--Failure to comply--Costs) and 2001  
5 c 179 s 7;
- 6 (8) RCW 48.31C.080 (Violations of chapter--Commissioner may seek  
7 superior court order) and 2001 c 179 s 8;
- 8 (9) RCW 48.31C.090 (Violations of chapter--Penalties--Civil  
9 forfeitures--Orders--Referral to prosecuting attorney--Imprisonment)  
10 and 2001 c 179 s 9;
- 11 (10) RCW 48.31C.100 (Violations of chapter--Impairment of financial  
12 condition) and 2001 c 179 s 10;
- 13 (11) RCW 48.31C.110 (Order for liquidation or rehabilitation--  
14 Recovery of distributions or payments--Liability--Maximum amount  
15 recoverable) and 2001 c 179 s 11;
- 16 (12) RCW 48.31C.120 (Violations of chapter--Contrary to interests  
17 of subscribers or the public) and 2001 c 179 s 12;
- 18 (13) RCW 48.31C.130 (Confidential proprietary and trade secret  
19 information--Exempt from public disclosure--Exceptions) and 2001 c 179  
20 s 13;
- 21 (14) RCW 48.31C.140 (Person aggrieved by actions of commissioner)  
22 and 2001 c 179 s 15;
- 23 (15) RCW 48.31C.150 (Rule making) and 2001 c 179 s 16;
- 24 (16) RCW 48.31C.160 (Dual holding company system membership) and  
25 2001 c 179 s 17;
- 26 (17) RCW 48.31C.900 (Severability--2001 c 179) and 2001 c 179 s 18;  
27 and
- 28 (18) RCW 48.31C.901 (Effective date--2001 c 179) and 2001 c 179 s  
29 19.

30 NEW SECTION. **Sec. 22.** PURPOSE AND SCOPE. (1) The purpose of this  
31 chapter is to provide the requirements for maintaining a risk  
32 management framework and completing an own risk and solvency assessment  
33 and provide guidance and instructions for filing an ORSA summary report  
34 with the insurance commissioner of this state.

35 (2) The requirements of this chapter apply to all insurers  
36 domiciled in this state unless exempt pursuant to section 27 of this  
37 act.

1 (3) The legislature finds and declares that the ORSA summary report  
2 contains confidential and sensitive information related to an insurer  
3 or insurance group's identification of risks material and relevant to  
4 the insurer or insurance group filing the report. This information  
5 includes proprietary and trade secret information that has the  
6 potential for harm and competitive disadvantage to the insurer or  
7 insurance group if the information is made public. It is the intent of  
8 this legislature that the ORSA summary report is a confidential  
9 document filed with the commissioner, that the ORSA summary report may  
10 be shared only as stated in this chapter and to assist the commissioner  
11 in the performance of his or her duties, and that in no event may the  
12 ORSA summary report be subject to public disclosure.

13 NEW SECTION. **Sec. 23.** DEFINITIONS. The definitions in this  
14 section apply throughout this chapter unless the context clearly  
15 requires otherwise.

16 (1) "Insurance group" means, for the purposes of conducting an  
17 ORSA, those insurers and affiliates included within an insurance  
18 holding company system as defined in RCW 48.31B.005.

19 (2) "Insurer" includes an insurer authorized under chapter 48.05  
20 RCW, a fraternal mutual insurer or society holding a license under RCW  
21 48.36A.290, a health care service contractor registered under chapter  
22 48.44 RCW, a health maintenance organization registered under chapter  
23 48.46 RCW, and a self-funded multiple employer welfare arrangement  
24 under chapter 48.125 RCW, as well as all persons engaged as, or  
25 purporting to be engaged as insurers, fraternal benefit societies,  
26 health care service contractors, health maintenance organizations, or  
27 self-funded multiple employer welfare arrangements in this state, and  
28 to persons in process of organization to become insurers, fraternal  
29 benefit societies, health care service contractors, health maintenance  
30 organizations, or self-funded multiple employer welfare arrangements,  
31 except that it does not include agencies, authorities, or  
32 instrumentalities of the United States, its possessions and  
33 territories, the Commonwealth of Puerto Rico, the District of Columbia,  
34 or a state or political subdivision of a state.

35 (3) "Own risk and solvency assessment" or "ORSA" means a  
36 confidential internal assessment, appropriate to the nature, scale, and  
37 complexity of an insurer or insurance group, conducted by that insurer

1 or insurance group of the material and relevant risks associated with  
2 the insurer or insurance group's current business plan, and the  
3 sufficiency of capital resources to support those risks.

4 (4) "ORSA guidance manual" means the own risk and solvency  
5 assessment guidance manual developed and adopted by the national  
6 association of insurance commissioners.

7 (5) "ORSA summary report" means a confidential high-level ORSA  
8 summary of an insurer or insurance group.

9 NEW SECTION. **Sec. 24.** RISK MANAGEMENT FRAMEWORK. An insurer  
10 shall maintain a risk management framework to assist the insurer with  
11 identifying, assessing, monitoring, managing, and reporting on its  
12 material and relevant risks. This requirement is satisfied if the  
13 insurance group of which the insurer is a member maintains a risk  
14 management framework applicable to the operations of the insurer.

15 NEW SECTION. **Sec. 25.** ORSA REQUIREMENT. Subject to section 27 of  
16 this act, an insurer, or the insurance group of which the insurer is a  
17 member, shall regularly conduct an ORSA consistent with a process  
18 comparable to the ORSA guidance manual. The ORSA must be conducted  
19 annually but also at any time when there are significant changes to the  
20 risk profile of the insurer or the insurance group of which the insurer  
21 is a member.

22 NEW SECTION. **Sec. 26.** ORSA SUMMARY REPORT. (1) Upon the  
23 commissioner's request, and no more than once each year, an insurer  
24 shall submit to the commissioner an ORSA summary report or any  
25 combination of reports that together contain the information described  
26 in the ORSA guidance manual, applicable to the insurer or the insurance  
27 group of which it is a member. Notwithstanding any request from the  
28 commissioner, if the insurer is a member of an insurance group, the  
29 insurer shall submit the report or set of reports required by this  
30 subsection if the commissioner is the lead state commissioner of the  
31 insurance group as determined by the procedures within the financial  
32 analysis handbook adopted by the national association of insurance  
33 commissioners.

34 (2) The report shall include a signature of the insurer or  
35 insurance group's chief risk officer or other executive having

1 responsibility for the oversight of the insurer's enterprise risk  
2 management process attesting to the best of his or her belief and  
3 knowledge that the insurer applies the enterprise risk management  
4 process described in the ORSA summary report and that a copy of the  
5 report has been provided to the insurer's board of directors or the  
6 appropriate governing committee.

7 (3) An insurer may comply with subsection (1) of this section by  
8 providing the most recent and substantially similar report or reports  
9 provided by the insurer or another member of an insurance group of  
10 which the insurer is a member to the commissioner of another state or  
11 to a supervisor or regulator of a foreign jurisdiction, if that report  
12 provides information that is comparable to the information described in  
13 the ORSA guidance manual. Any such report in a language other than  
14 English must be accompanied by a translation of that report into the  
15 English language.

16 NEW SECTION. **Sec. 27.** EXEMPTIONS. (1) An insurer is exempt from  
17 the requirements of this chapter, if:

18 (a) The insurer has annual direct written and unaffiliated assumed  
19 premium including international direct and assumed premium, but  
20 excluding premium reinsured with the federal crop insurance corporation  
21 and federal flood program, less than five hundred million dollars; and

22 (b) The insurance group of which the insurer is a member has annual  
23 direct written and unaffiliated assumed premium including international  
24 direct and assumed premium, but excluding premium reinsured with the  
25 federal crop insurance corporation and federal flood program, less than  
26 one billion dollars.

27 (2) If an insurer qualifies for exemption pursuant to subsection  
28 (1)(a) of this section, but the insurance group of which the insurer is  
29 a member does not qualify for exemption pursuant to subsection (1)(b)  
30 of this section, then the ORSA summary report that may be required  
31 pursuant to section 26 of this act must include every insurer within  
32 the insurance group. This requirement is satisfied by the submission  
33 of more than one ORSA summary report for any combination of insurers,  
34 provided any combination of reports includes every insurer within the  
35 insurance group.

36 (3) If an insurer does not qualify for exemption pursuant to  
37 subsection (1)(a) of this section, but the insurance group of which the

1 insurer is a member does qualify for exemption pursuant to subsection  
2 (1)(b) of this section, then the only ORSA summary report that may be  
3 required pursuant to section 26 of this act is the report applicable to  
4 that insurer.

5 (4) If an insurer does not qualify for exemption pursuant to  
6 subsection (1)(a) of this section, the insurer may apply to the  
7 commissioner for a waiver from the requirements of this chapter based  
8 upon unique circumstances. In deciding whether to grant the insurer's  
9 request for waiver, the commissioner may consider the type and volume  
10 of business written, ownership and organizational structure, and any  
11 other factor the commissioner considers relevant to the insurer or  
12 insurance group of which the insurer is a member. If the insurer is a  
13 part of an insurance group with insurers domiciled in more than one  
14 state, the commissioner shall coordinate with the lead state  
15 commissioner and with the other domiciliary commissioners in  
16 considering whether to grant the insurer's request for a waiver.

17 (5) Notwithstanding the exemptions stated in this section, the  
18 commissioner may require that an insurer maintain a risk management  
19 framework, conduct an ORSA, and file an ORSA summary report (a) based  
20 on unique circumstances including, but not limited to, the type and  
21 volume of business written, ownership and organizational structure,  
22 federal agency requests, and international supervisor requests; and (b)  
23 if the insurer has risk-based capital at the company action level event  
24 as set forth in RCW 48.05.440 or 48.43.310, meets one or more of the  
25 standards of an insurer deemed to be in hazardous financial condition  
26 as defined in WAC 284-16-310, or otherwise exhibits qualities of a  
27 troubled insurer as determined by the commissioner.

28 (6) If an insurer that qualifies for exemption pursuant to  
29 subsection (1)(a) of this section subsequently no longer qualifies for  
30 that exemption due to changes in premium reflected in the insurer's  
31 most recent annual statement or in the most recent annual statements of  
32 the insurers within the insurance group of which the insurer is a  
33 member, the insurer has one year following the year the threshold is  
34 exceeded to comply with the requirement of this chapter.

35 NEW SECTION. **Sec. 28.** CONTENTS OF ORSA SUMMARY REPORT. (1) The  
36 ORSA summary report shall be prepared consistent with the ORSA guidance



1 manual, subject to the requirements of subsection (2) of this section.  
2 Documentation and supporting information must be maintained and made  
3 available upon examination or upon the request of the commissioner.

4 (2) The review of the ORSA summary report, and any additional  
5 requests for information, must be made using similar procedures  
6 currently used in the analysis and examination of multistate or global  
7 insurers and insurance groups.

8 NEW SECTION. **Sec. 29.** CONFIDENTIAL TREATMENT. (1) Documents,  
9 materials, or other information, including the ORSA summary report, in  
10 the possession or control of the commissioner that are obtained by,  
11 created by, or disclosed to the commissioner or any other person under  
12 this chapter, is recognized by this state as being proprietary and to  
13 contain trade secrets. All such documents, materials, or other  
14 information is confidential by law and privileged, is not subject to  
15 chapter 42.56 RCW, is not subject to subpoena, and is not subject to  
16 discovery or admissible in evidence in any private civil action.  
17 However, the commissioner is authorized to use the documents,  
18 materials, or other information in the furtherance of any regulatory or  
19 legal action brought as a part of the commissioner's official duties.  
20 The commissioner may not otherwise make the documents, materials, or  
21 other information public without the prior written consent of the  
22 insurer.

23 (2) Neither the commissioner nor any person who received documents,  
24 materials, or other ORSA-related information, through examination or  
25 otherwise, while acting under the authority of the commissioner or with  
26 whom such documents, materials, or other information are shared  
27 pursuant to this chapter, is permitted or required to testify in any  
28 private civil action concerning any confidential documents, materials,  
29 or information subject to subsection (1) of this section.

30 (3) In order to assist in the performance of the commissioner's  
31 regulatory duties, the commissioner:

32 (a) May share documents, materials, or other ORSA-related  
33 information, including the confidential and privileged documents,  
34 materials, or information subject to subsection (1) of this section,  
35 including proprietary and trade secret documents and materials with  
36 other state, federal, and international regulatory agencies, including  
37 members of any supervisory college under section 8(3) of this act, with

1 the national association of insurance commissioners, with the  
2 international association of insurance supervisors and the bank for  
3 international settlements, and with any third-party consultants  
4 designated by the commissioner, provided that the recipient agrees in  
5 writing to maintain the confidentiality and privileged status of the  
6 ORSA-related documents, materials, or other information and has  
7 verified in writing the legal authority to maintain confidentiality;

8 (b) May receive documents, materials, or ORSA-related information,  
9 including otherwise confidential and privileged documents, materials,  
10 or information, including proprietary and trade secret information or  
11 documents, from regulatory officials of other foreign or domestic  
12 jurisdictions, including members of any supervisory college under  
13 section 8(3) of this act, from the national association of insurance  
14 commissioners, the international association of insurance supervisors  
15 and the bank for international settlements, and must maintain as  
16 confidential or privileged any document, material, or information  
17 received with notice or the understanding that it is confidential or  
18 privileged under the laws of the jurisdiction that is the source of the  
19 document, material, or information;

20 (c) Shall enter into written agreements with the national  
21 association of insurance commissioners or a third-party consultant  
22 governing sharing and use of information provided pursuant to this  
23 chapter, consistent with this subsection that specifies procedures and  
24 protocols regarding the confidentiality and security of information  
25 shared with the national association of insurance commissioners or  
26 third-party consultant pursuant to this chapter, including procedures  
27 and protocols for sharing by the national association of insurance  
28 commissioners with other state regulators from states in which the  
29 insurance group has domiciled insurers. The agreement must provide  
30 that the recipient agrees in writing to maintain the confidentiality  
31 and privileged status of the ORSA-related documents, materials, or  
32 other information and has verified in writing the legal authority to  
33 maintain confidentiality;

34 (d) Shall specify that ownership of information shared with the  
35 national association of insurance commissioners or third-party  
36 consultants pursuant to this chapter remains with the commissioner and  
37 the national association of insurance commissioners' or a third-party

1 consultant's use of the information is subject to the direction of the  
2 commissioner;

3 (e) Shall prohibit the national association of insurance  
4 commissioners or third-party consultant from storing the information  
5 shared pursuant to this chapter in a permanent database after the  
6 underlying analysis is completed;

7 (f) Shall require prompt notice to be given to an insurer whose  
8 confidential information in the possession of the national association  
9 of insurance commissioners or a third-party consultant pursuant to this  
10 chapter is subject to a request or subpoena to the national association  
11 of insurance commissioners for disclosure or production;

12 (g) Shall require the national association of insurance  
13 commissioners and its affiliates and subsidiaries to consent to  
14 intervention by an insurer in any judicial or administrative action in  
15 which the national association of insurance commissioners and its  
16 affiliates and subsidiaries may be required to disclose confidential  
17 information about the insurer shared with the national association of  
18 insurance commissioners and its affiliates and subsidiaries pursuant to  
19 this chapter; and

20 (h) In the case of an agreement involving a third-party consultant,  
21 shall provide the insurer's written consent.

22 (4) The sharing of information by the commissioner pursuant to this  
23 chapter shall not constitute a delegation of regulatory authority or  
24 rule making, and the commissioner is solely responsible for the  
25 administration, execution, and enforcement of the provisions of this  
26 chapter.

27 (5) A waiver of any applicable privilege or claim of  
28 confidentiality in the documents, materials, or information shall not  
29 occur as a result of disclosure to the commissioner under this section  
30 or as a result of sharing as authorized in this chapter.

31 (6) Documents, materials, or other information in the possession or  
32 control of the national association of insurance commissioners pursuant  
33 to this chapter are confidential by law and privileged, are not  
34 subject to chapter 42.56 RCW, are not subject to subpoena, and are not  
35 subject to discovery or admissible in evidence in any private civil  
36 action.

1 NEW SECTION. **Sec. 30.** SANCTIONS. The commissioner shall require  
2 any insurer failing, without just cause, to file the ORSA summary  
3 report as required in this chapter, after notice and hearing, to pay a  
4 fine of five hundred dollars for each day's delay, to be recovered by  
5 the commissioner and the fine collected shall be transferred to the  
6 treasurer for deposit into the state general fund. The maximum fine  
7 under this section is one hundred thousand dollars. The commissioner  
8 may reduce the fine if the insurer demonstrates to the commissioner  
9 that the imposition of the fine would constitute a financial hardship  
10 to the insurer.

11 **Sec. 31.** RCW 42.56.400 and 2013 c 277 s 5 and 2013 c 65 s 5 are  
12 each reenacted and amended to read as follows:

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

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

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

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

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

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

32 (6) Examination reports and information obtained by the department  
33 of financial institutions from banks under RCW 30.04.075, from savings  
34 banks under RCW 32.04.220, from savings and loan associations under RCW  
35 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
36 and sellers under RCW 31.45.030(3), and from securities brokers and

1 investment advisers under RCW 21.20.100, all of which is confidential  
2 and privileged information;

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

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

8 (~~Confidential proprietary and trade secret information~~  
9 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~  
10 ~~and 48.31C.070~~) Documents, materials, or information obtained by the  
11 insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025,  
12 48.31B.030, 48.31B.035, and section 8 of this act, all of which are  
13 confidential and privileged;

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

19 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).  
20 (b) "Health care facility" has the same meaning as in RCW  
21 48.140.010(6).  
22 (c) "Health care provider" has the same meaning as in RCW  
23 48.140.010(7).  
24 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).  
25 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

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

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

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

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

34 (15) Documents, materials, or information obtained by the insurance  
35 commissioner under RCW 48.17.595;

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

1 (17) Documents, materials, or information obtained by the insurance  
2 commissioner in the commissioner's capacity as receiver under RCW  
3 48.31.025 and 48.99.017, which are records under the jurisdiction and  
4 control of the receivership court. The commissioner is not required to  
5 search for, log, produce, or otherwise comply with the public records  
6 act for any records that the commissioner obtains under chapters 48.31  
7 and 48.99 RCW in the commissioner's capacity as a receiver, except as  
8 directed by the receivership court;

9 (18) Documents, materials, or information obtained by the insurance  
10 commissioner under RCW 48.13.151;

11 (19) Data, information, and documents provided by a carrier  
12 pursuant to section 1, chapter 172, Laws of 2010;

13 (20) Information in a filing of usage-based insurance about the  
14 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

15 (21) Data, information, and documents, other than those described  
16 in RCW 48.02.210(2), that are submitted to the office of the insurance  
17 commissioner by an entity providing health care coverage pursuant to  
18 RCW 28A.400.275 and 48.02.210; (~~and~~)

19 (22) Data, information, and documents obtained by the insurance  
20 commissioner under RCW 48.29.017; (~~and~~)

21 (23) Information not subject to public inspection or public  
22 disclosure under RCW 48.43.730(5); and

23 (24) Documents, materials, or information obtained by the insurance  
24 commissioner under chapter 48.-- RCW (the new chapter created in  
25 section 34 of this act).

26 **Sec. 32.** RCW 42.56.400 and 2013 c 65 s 5 are each amended to read  
27 as follows:

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

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

33 (2) Information obtained and exempted or withheld from public  
34 inspection by the health care authority under RCW 41.05.026, whether  
35 retained by the authority, transferred to another state purchased  
36 health care program by the authority, or transferred by the authority

1 to a technical review committee created to facilitate the development,  
2 acquisition, or implementation of state purchased health care under  
3 chapter 41.05 RCW;

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

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

8 (5) Information provided under RCW 48.05.510 through 48.05.535,  
9 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
10 through 48.46.625;

11 (6) Examination reports and information obtained by the department  
12 of financial institutions from banks under RCW 30.04.075, from savings  
13 banks under RCW 32.04.220, from savings and loan associations under RCW  
14 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
15 and sellers under RCW 31.45.030(3), and from securities brokers and  
16 investment advisers under RCW 21.20.100, all of which is confidential  
17 and privileged information;

18 (7) Information provided to the insurance commissioner under RCW  
19 48.110.040(3);

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

23 (~~Confidential proprietary and trade secret information~~  
24 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~  
25 ~~and 48.31C.070)) Documents, materials, or information obtained by the  
26 insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025,  
27 48.31B.030, 48.31B.035, and section 8 of this act, all of which are  
28 confidential and privileged;~~

29 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
30 7.70.140 that, alone or in combination with any other data, may reveal  
31 the identity of a claimant, health care provider, health care facility,  
32 insuring entity, or self-insurer involved in a particular claim or a  
33 collection of claims. For the purposes of this subsection:

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

35 (b) "Health care facility" has the same meaning as in RCW  
36 48.140.010(6).

37 (c) "Health care provider" has the same meaning as in RCW  
38 48.140.010(7).

1 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).  
2 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);  
3 (11) Documents, materials, or information obtained by the insurance  
4 commissioner under RCW 48.135.060;  
5 (12) Documents, materials, or information obtained by the insurance  
6 commissioner under RCW 48.37.060;  
7 (13) Confidential and privileged documents obtained or produced by  
8 the insurance commissioner and identified in RCW 48.37.080;  
9 (14) Documents, materials, or information obtained by the insurance  
10 commissioner under RCW 48.37.140;  
11 (15) Documents, materials, or information obtained by the insurance  
12 commissioner under RCW 48.17.595;  
13 (16) Documents, materials, or information obtained by the insurance  
14 commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);  
15 (17) Documents, materials, or information obtained by the insurance  
16 commissioner in the commissioner's capacity as receiver under RCW  
17 48.31.025 and 48.99.017, which are records under the jurisdiction and  
18 control of the receivership court. The commissioner is not required to  
19 search for, log, produce, or otherwise comply with the public records  
20 act for any records that the commissioner obtains under chapters 48.31  
21 and 48.99 RCW in the commissioner's capacity as a receiver, except as  
22 directed by the receivership court;  
23 (18) Documents, materials, or information obtained by the insurance  
24 commissioner under RCW 48.13.151;  
25 (19) Data, information, and documents provided by a carrier  
26 pursuant to section 1, chapter 172, Laws of 2010;  
27 (20) Information in a filing of usage-based insurance about the  
28 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);  
29 (21) Data, information, and documents, other than those described  
30 in RCW 48.02.210(2), that are submitted to the office of the insurance  
31 commissioner by an entity providing health care coverage pursuant to  
32 RCW 28A.400.275 and 48.02.210; (~~and~~)  
33 (22) Data, information, and documents obtained by the insurance  
34 commissioner under RCW 48.29.017; and  
35 (23) Documents, materials, or information obtained by the insurance  
36 commissioner under chapter 48.-- RCW (the new chapter created in  
37 section 34 of this act).



1        NEW SECTION.    **Sec. 33.** SEVERABILITY. If any provision of this act  
2 or its application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 34.** Sections 22 through 30 and 35 of this act  
6 constitute a new chapter in Title 48 RCW.

7        NEW SECTION.    **Sec. 35.** SHORT TITLE. This chapter may be known and  
8 cited as the risk management and solvency assessment act.

9        NEW SECTION.    **Sec. 36.** EFFECTIVE DATE. Except for sections 14 and  
10 32 of this act, which take effect July 1, 2017, this act takes effect  
11 January 1, 2015.

12        NEW SECTION.    **Sec. 37.** Sections 13 and 31 of this act expire July  
13 1, 2017."

**SHB 2461** - S AMD

By Senators Hobbs, Angel, Benton, Mullet, Hatfield, Nelson, Fain

**ADOPTED 03/07/2014**

14        On page 1, line 1 of the title, after "companies;" strike the  
15 remainder of the title and insert "amending RCW 48.31B.005, 48.31B.010,  
16 48.31B.015, 48.31B.020, 48.31B.025, 48.31B.030, 48.31B.035, 48.31B.040,  
17 48.31B.050, 48.31B.070, 42.56.400, 48.02.065, 48.13.061, 48.97.005,  
18 48.125.140, 48.155.010, 48.155.015, and 42.56.400; reenacting and  
19 amending RCW 42.56.400 and 42.56.400; adding new sections to chapter  
20 48.31B RCW; adding a new chapter to Title 48 RCW; repealing RCW  
21 48.31C.010, 48.31C.020, 48.31C.030, 48.31C.040, 48.31C.050, 48.31C.060,  
22 48.31C.070, 48.31C.080, 48.31C.090, 48.31C.100, 48.31C.110, 48.31C.120,  
23 48.31C.130, 48.31C.140, 48.31C.150, 48.31C.160, 48.31C.900, and  
24 48.31C.901; prescribing penalties; providing effective dates; and  
25 providing an expiration date."

EFFECT: Establishes an expedited arbitration process prior to the public disclosure of any documents, materials, or other information that an insurance company may believe to constitute proprietary information.

--- END ---