
HOUSE BILL 2321

State of Washington

65th Legislature

2018 Regular Session

By Representatives Bergquist, Kirby, Vick, and Stanford; by request of Insurance Commissioner

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1 AN ACT Relating to the insurer corporate governance annual
2 disclosure model act; reenacting and amending RCW 42.56.400; adding a
3 new chapter to Title 48 RCW; creating a new section; prescribing
4 penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to:

7 (a) Provide the insurance commissioner a summary of an insurer or
8 insurance group's corporate governance structure, policies, and
9 practices to permit the commissioner to gain and maintain an
10 understanding of the insurer's corporate governance framework;

11 (b) Outline the requirements for completing a corporate
12 governance annual disclosure with the commissioner; and

13 (c) Provide for the confidential treatment of the corporate
14 governance annual disclosure and related information that will
15 contain confidential and sensitive information related to an insurer
16 or insurance group's internal operations and proprietary and trade
17 secret information which, if made public, could potentially cause the
18 insurer or insurance group competitive harm or disadvantage.

19 (2) This chapter does not prescribe or impose corporate
20 governance standards and internal procedures beyond that which is
21 required under applicable corporate law. This chapter does not limit

1 the commissioner's authority, or the rights or obligations of third
2 parties, under chapter 48.03 RCW.

3 (3) This chapter applies to all insurers domiciled in this state.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires
6 otherwise.

7 (1) "Commissioner" means the insurance commissioner of this
8 state.

9 (2) "Corporate governance annual disclosure" means a confidential
10 report filed by the insurer or insurance group under this chapter.

11 (3) "Insurance group" means those insurers and affiliates
12 included within an insurance holding company system as defined in RCW
13 48.31B.005.

14 (4) "Insurer" has the same meaning as set forth in RCW
15 48.31B.005.

16 (5) "ORSA summary report" means the report filed under chapter
17 48.05A RCW.

18 NEW SECTION. **Sec. 3.** (1) An insurer, or the insurance group of
19 which the insurer is a member, must, no later than June 1st of each
20 calendar year, submit to the commissioner a corporate governance
21 annual disclosure that contains the information described in section
22 4(2) of this act. If the insurer is a member of an insurance group,
23 the insurer must submit the report required by this section to the
24 commissioner of the lead state for the insurance group, under the
25 laws of the lead state, as determined by the procedures outlined in
26 the most recent financial analysis handbook adopted by the national
27 association of insurance commissioners.

28 (2) The corporate governance annual disclosure must include a
29 signature of the insurer or insurance group's chief executive officer
30 or corporate secretary attesting to the best of the individual's
31 belief and knowledge that the insurer has implemented the corporate
32 governance practices and that a copy of the disclosure has been
33 provided to the insurer's board of directors or the appropriate
34 committee thereof.

35 (3) An insurer not required to submit a corporate governance
36 annual disclosure under this section must do so upon the
37 commissioner's request.

1 (4) For purposes of completing the corporate governance annual
2 disclosure, the insurer or insurance group may provide information
3 regarding corporate governance at either (a) the ultimate controlling
4 parent level, (b) an intermediate holding company level, or (c) the
5 individual legal entity level, or any combination of (a) through (c)
6 of this subsection, depending upon how the insurer or insurance group
7 has structured its system of corporate governance. The insurer or
8 insurance group is encouraged to make the corporate governance annual
9 disclosure at the level at which the insurer's or insurance group's
10 risk appetite is determined, or at which the earnings, capital,
11 liquidity, operations, and reputation of the insurer are overseen
12 collectively and at which the supervision of those factors are
13 coordinated and exercised, or the level at which legal liability for
14 failure of general corporate governance duties would be placed. If
15 the insurer or insurance group determines the level of reporting
16 based on these criteria, it must indicate which of the three criteria
17 was used to determine the level of reporting and explain any
18 subsequent changes in the level of reporting.

19 (5) The review of the corporate governance annual disclosure and
20 any additional requests for information shall be made through the
21 lead state as determined by the procedure within the most recent
22 financial analysis handbook referenced in subsection (1) of this
23 section.

24 (6) Insurers providing information substantially similar to the
25 information required by this chapter in other documents provided to
26 the commissioner, including proxy statements filed in conjunction
27 with form B requirements, or other state or federal filings provided
28 to the commissioner are not required to duplicate that information in
29 the corporate governance annual disclosure, but are only required to
30 cross-reference the document in which the information is included.

31 NEW SECTION. **Sec. 4.** (1) The insurer or insurance group has
32 discretion over the responses to the corporate governance annual
33 disclosure inquiries, provided the corporate governance annual
34 disclosure contains the material information necessary to permit the
35 commissioner to gain an understanding of the insurer's or insurance
36 group's corporate governance structure, policies, and practices. The
37 commissioner may request additional information that he or she deems
38 material and necessary to provide the commissioner with a clear

1 understanding of the corporate governance policies, the reporting or
2 information system, or controls implementing those policies.

3 (2) The corporate governance annual disclosure must be prepared
4 consistent with the national association of insurance commissioners'
5 corporate governance annual disclosure model rule which may be
6 adopted by the commissioner. Documentation and supporting information
7 must be maintained and made available upon examination or upon
8 request of the commissioner.

9 NEW SECTION. **Sec. 5.** (1) Documents, materials, or other
10 information including the corporate governance annual disclosure, in
11 the possession or control of the commissioner that are obtained by,
12 created by, or disclosed to the commissioner or any other person
13 under this chapter, are recognized by this state as being proprietary
14 and to contain trade secrets. All the documents, materials, or other
15 information is confidential by law and privileged, is not subject to
16 chapter 42.56 RCW, are not subject to subpoena, and are not subject
17 to discovery or admissible in evidence in any private civil action.
18 However, the commissioner is authorized to use the documents,
19 materials, or other information in the furtherance of any regulatory
20 or legal action brought as a part of the commissioner's official
21 duties. The commissioner shall not otherwise make the documents,
22 materials, or other information public without the prior written
23 consent of the insurer. This section does not require written consent
24 of the insurer before the commissioner shares or receives
25 confidential documents, materials, or other corporate governance
26 annual disclosure related information under subsection (3) of this
27 section to assist in the performance of the commissioner's regular
28 duties.

29 (2) Neither the commissioner nor any person who received
30 documents, materials, or other corporate governance annual disclosure
31 related information, through examination or otherwise, while acting
32 under the authority of the commissioner, or with whom the documents,
33 materials, or other information are shared under this chapter are
34 permitted or required to testify in any private civil action
35 concerning any confidential documents, materials, or information
36 subject to subsection (1) of this section.

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

1 (a) May, upon request, share documents, materials, or other
2 corporate governance annual disclosure related information including
3 confidential and privileged documents, materials, or information
4 subject to subsection (1) of this section, including proprietary and
5 trade secret documents and materials with other state, federal, and
6 international financial regulatory agencies, including members of any
7 supervisory college as defined in RCW 48.31B.037, with the national
8 association of insurance commissioners, and with third-party
9 consultants under section 6 of this act, provided that the recipient
10 agrees in writing to maintain the confidentiality and privileged
11 status of the corporate governance annual disclosure related
12 documents, materials, or other information and has verified in
13 writing the legal authority to maintain confidentiality; and

14 (b) May receive documents, materials, and other corporate
15 governance annual disclosure related information, including otherwise
16 confidential and privileged documents, materials, or information,
17 including proprietary and trade secret information or documents, from
18 regulatory officials of other state, federal, and international
19 financial regulatory agencies, including members of any supervisory
20 college as defined in RCW 48.31B.037, and from the national
21 association of insurance commissioners, and shall maintain as
22 confidential or privileged any documents, materials, or other
23 information received with notice or the understanding that it is
24 confidential or privileged under the laws of the jurisdiction that is
25 the source of the documents, materials, or information.

26 (4) The sharing of information and documents by the commissioner
27 under this chapter does not constitute a delegation of regulatory
28 authority or rule making, and the commissioner is solely responsible
29 for the administration, execution, and enforcement of this chapter.

30 (5) A waiver of any applicable privilege or claim of
31 confidentiality in the documents, proprietary and trade secret
32 materials, or other corporate governance annual disclosure related
33 information does not occur as a result of disclosure of the corporate
34 governance annual disclosure related information or documents to the
35 commissioner under this section or as a result of sharing as
36 authorized in this chapter.

37 NEW SECTION. **Sec. 6.** (1) The commissioner may retain at the
38 insurer's expense, third-party consultants, including attorneys,
39 actuaries, accountants, and other experts not otherwise part of the

1 commissioner's staff as may be reasonably necessary to assist the
2 commissioner in reviewing the corporate governance annual disclosure
3 and related information or the insurer's compliance with this
4 chapter.

5 (2) Any persons retained under subsection (1) of this section is
6 under the direction and control of the commissioner and is acting in
7 a purely advisory capacity.

8 (3) The national association of insurance commissioners and
9 third-party consultants are subject to the same confidentiality
10 standards and requirements as the commissioner.

11 (4) As part of the retention process, a third-party consultant
12 must verify to the commissioner, with notice to the insurer, that it
13 is free of a conflict of interest and that it has internal procedures
14 in place to monitor compliance with a conflict and to comply with the
15 confidentiality standards and requirements of this chapter.

16 (5) A written agreement with either the national association of
17 insurance commissioners or a third-party consultant, or both,
18 governing the sharing and use of information provided under this
19 chapter must contain the following provisions and expressly require
20 the written consent of the insurer prior to making public information
21 provided under this chapter:

22 (a) Specific procedures and protocols for maintaining the
23 confidentiality and security of corporate governance annual
24 disclosure related information shared with the national association
25 of insurance commissioner or a third-party consultant under this
26 chapter;

27 (b) Procedures and protocols for sharing by the national
28 association of insurance commissioners only with other state
29 regulators from states in which the insurance group has domiciled
30 insurers. The agreement must provide that the recipient agrees in
31 writing to maintain the confidentiality and privileged status of the
32 corporate governance annual disclosure related documents, materials,
33 or other information and has verified in writing the legal authority
34 to maintain confidentiality;

35 (c) A provision specifying that ownership of the corporate
36 governance annual disclosure related information shared with the
37 national association of insurance commissioners or a third-party
38 consultant remains with the commissioner and the national association
39 of insurance commissioners or third-party consultant's use of the
40 information is subject to the direction of the commissioner;

1 (d) A provision that prohibits the national association of
2 insurance commissioners or a third-party consultant from storing the
3 information shared under this chapter in a permanent database after
4 the underlying analysis is completed;

5 (e) A provision requiring the national association of insurance
6 commissioners or a third-party consultant to provide prompt notice to
7 the commissioner and to the insurer or insurance group regarding any
8 subpoena, request for disclosure, or request for production of the
9 insurer's corporate governance annual disclosure related information;
10 and

11 (f) A requirement that the national association of insurance
12 commissioners or a third-party consultant consent to intervention by
13 an insurer in any judicial or administrative action in which the
14 national association of insurance commissioners or a third-party
15 consultant may be required to disclose confidential information about
16 the insurer shared with the national association of insurance
17 commissioners or third-party consultant under this chapter.

18 NEW SECTION. **Sec. 7.** Any insurer failing, without just cause,
19 to timely file the corporate governance annual disclosure as required
20 by this chapter is required, after notice and hearing under chapters
21 48.04 and 34.05 RCW, to pay a penalty of five hundred dollars for
22 each day's delay, to be recovered by the commissioner and the penalty
23 must be paid to the general fund of this state. The maximum penalty
24 under this section is one hundred thousand dollars. The commissioner
25 may reduce the penalty if the insurer demonstrates to the
26 commissioner that the imposition of the penalty would constitute a
27 financial hardship to the insurer.

28 NEW SECTION. **Sec. 8.** The commissioner may, under chapter 34.05
29 RCW, adopt rules to implement and administer this chapter, including
30 the national association of insurance commissioners' corporate
31 governance annual disclosure model rule.

32 **Sec. 9.** RCW 42.56.400 and 2017 3rd sp.s. c 30 s 2 and 2017 c 193
33 s 2 are each reenacted and amended to read as follows:

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

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

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

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

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

15 (5) Information provided under RCW 48.05.510 through 48.05.535,
16 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and
17 48.46.600 through 48.46.625;

18 (6) Examination reports and information obtained by the
19 department of financial institutions from banks under RCW 30A.04.075,
20 from savings banks under RCW 32.04.220, from savings and loan
21 associations under RCW 33.04.110, from credit unions under RCW
22 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and
23 from securities brokers and investment advisers under RCW 21.20.100,
24 all of which is confidential and privileged information;

25 (7) Information provided to the insurance commissioner under RCW
26 48.110.040(3);

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

30 (9) Documents, materials, or information obtained by the
31 insurance commissioner under RCW 48.31B.015(2) (l) and (m),
32 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential
33 and privileged;

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

39 (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
6 48.140.010(8).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (24) Documents, materials, or information obtained by the
4 insurance commissioner under chapter 48.05A RCW;

5 (25) Documents, materials, or information obtained by the
6 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),
7 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,
8 materials, or information independently qualify for exemption from
9 disclosure as documents, materials, or information in possession of
10 the commissioner pursuant to a financial conduct examination and
11 exempt from disclosure under RCW 48.02.065; (~~and~~))

12 (26) Nonpublic personal health information obtained by, disclosed
13 to, or in the custody of the insurance commissioner, as provided in
14 RCW 48.02.068; (~~and~~))

15 (27) Data, information, and documents obtained by the insurance
16 commissioner under RCW 48.02.230; and

17 (28) Documents, materials, or other information, including the
18 corporate annual disclosure obtained by the insurance commissioner
19 under section 3 of this act.

20 NEW SECTION. Sec. 10. If any provision of this chapter other
21 than section 6 of this act, or its application to any person or
22 circumstances is held invalid, the remainder of the chapter or the
23 application of the provision to other persons or circumstances is not
24 affected.

25 NEW SECTION. Sec. 11. (1) The first filing of the corporate
26 governance annual disclosure is 2019.

27 (2) This act takes effect January 1, 2019.

28 NEW SECTION. Sec. 12. Sections 1 through 8 of this act
29 constitute a new chapter in Title 48 RCW.

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