
SUBSTITUTE HOUSE BILL 2207

State of Washington

66th Legislature

2020 Regular Session

By House Consumer Protection & Business (originally sponsored by Representative Walen; by request of Insurance Commissioner)

1 AN ACT Relating to the group-wide supervision of internationally
2 active insurance groups; amending RCW 48.31B.005, 48.31B.038, and
3 42.56.400; and adding a new section to chapter 48.31B RCW.

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

5 **Sec. 1.** RCW 48.31B.005 and 2015 c 122 s 1 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

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

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

16 (3) "Control," including the terms "controlling," "controlled
17 by," and "under common control with," means the possession, direct or
18 indirect, of the power to direct or cause the direction of the
19 management and policies of a person, whether through the ownership of
20 voting securities, by contract other than a commercial contract for
21 goods or nonmanagement services, or otherwise, unless the power is

1 the result of an official position with or corporate office held by
2 the person. Control is presumed to exist if any person, directly or
3 indirectly, owns, controls, holds with the power to vote, or holds
4 proxies representing, ten percent or more of the voting securities of
5 any other person. This presumption may be rebutted by a showing made
6 in a manner similar to that provided by RCW 48.31B.025(11) that
7 control does not exist in fact. The commissioner may determine, after
8 furnishing all persons in interest notice and opportunity to be heard
9 and making specific findings of fact to support such determination,
10 that control exists in fact, notwithstanding the absence of a
11 presumption to that effect.

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

21 (5) "Group-wide supervisor" means the regulatory official
22 authorized to engage in conducting and coordinating group-wide
23 supervision activities who is determined or acknowledged by the
24 commissioner under section 3 of this act to have sufficient contacts
25 with the internationally active insurance group.

26 (6) "Insurance holding company system" means a system that
27 consists of two or more affiliated persons, one or more of which is
28 an insurer.

29 ((+6)) (7) "Insurer" includes an insurer authorized under
30 chapter 48.05 RCW, a fraternal mutual insurer or society holding a
31 license under RCW 48.36A.290, a health care service contractor
32 registered under chapter 48.44 RCW, a health maintenance organization
33 registered under chapter 48.46 RCW, and a self-funded multiple
34 employer welfare arrangement under chapter 48.125 RCW, as well as all
35 persons engaged as, or purporting to be engaged as insurers,
36 fraternal benefit societies, health care service contractors, health
37 maintenance organizations, or self-funded multiple employer welfare
38 arrangements in this state, and to persons in process of organization
39 to become insurers, fraternal benefit societies, health care service
40 contractors, health maintenance organizations, or self-funded

1 multiple employer welfare arrangements, except it does not include
2 agencies, authorities, or instrumentalities of the United States, its
3 possessions and territories, the commonwealth of Puerto Rico, the
4 District of Columbia, or a state or political subdivision of a state.

5 ~~((7))~~ (8) "Internationally active insurance group" means an
6 insurance holding company system that:

7 (a) Includes an insurer registered under RCW 48.31B.025; and

8 (b) Meets the following criteria:

9 (i) Premiums written in at least three countries;

10 (ii) The percentage of gross premiums written outside the United
11 States is at least ten percent of the insurance holding company
12 system's total gross written premiums; and

13 (iii) Based on a three-year rolling average, the total assets of
14 the insurance holding company system are at least fifty billion
15 dollars or the total gross written premiums of the insurance holding
16 company system are at least ten billion dollars.

17 (9) "Person" means an individual, a corporation, a partnership,
18 an association, a joint stock company, a trust, an unincorporated
19 organization, any similar entity, or any combination of the foregoing
20 acting in concert, but does not include a joint venture partnership
21 exclusively engaged in owning, managing, leasing, or developing real
22 or tangible personal property.

23 ~~((8))~~ (10) "Securityholder" means a securityholder of a
24 specified person who owns any security of that person, including
25 common stock, preferred stock, debt obligations, and any other
26 security convertible into or evidencing the right to acquire any of
27 the foregoing.

28 ~~((9))~~ (11) "Subsidiary" means a subsidiary of a specified
29 person who is an affiliate controlled by that person directly or
30 indirectly through one or more intermediaries.

31 ~~((10))~~ (12) "Voting security" includes any security convertible
32 into or evidencing a right to acquire a voting security.

33 **Sec. 2.** RCW 48.31B.038 and 2015 c 122 s 9 are each amended to
34 read as follows:

35 (1) Documents, materials, or other information in the possession
36 or control of the commissioner that are obtained by or disclosed to
37 the commissioner or any other person in the course of an examination
38 or investigation made pursuant to RCW 48.31B.035 and all information
39 reported ~~((pursuant to))~~ or provided to the commissioner under RCW

1 48.31B.015(2) (l) and (m), 48.31B.025, (~~and~~) 48.31B.030, and
2 section 3 of this act are confidential by law and privileged, are not
3 subject to chapter 42.56 RCW, are not subject to subpoena, and are
4 not subject to discovery or admissible in evidence in any private
5 civil action. However, the commissioner is authorized to use the
6 documents, materials, or other information in the furtherance of any
7 regulatory or legal action brought as a part of the commissioner's
8 official duties. The commissioner shall not otherwise make the
9 documents, materials, or other information public without the prior
10 written consent of the insurer to which it pertains unless the
11 commissioner, after giving the insurer and its affiliates who would
12 be affected thereby, notice and opportunity to be heard, determines
13 that the interest of policyholders, shareholders, or the public is
14 served by the publication thereof, in which event the commissioner
15 may publish all or any part in such manner as may be deemed
16 appropriate.

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

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

26 (a) May share documents, materials, or other information,
27 including the confidential and privileged documents, materials, or
28 information subject to subsection (1) of this section, with other
29 state, federal, and international regulatory agencies, with the
30 national association of insurance commissioners and its affiliates
31 and subsidiaries, and with state, federal, and international law
32 enforcement authorities, including members of any supervisory college
33 described in RCW 48.31B.037, provided the recipient agrees in writing
34 to maintain the confidentiality and privileged status of the
35 document, material, or other information, and has verified in writing
36 the legal authority to maintain confidentiality;

37 (b) Notwithstanding (a) of this subsection, may only share
38 confidential and privileged documents, material, or information
39 reported pursuant to RCW 48.31B.025(12) with commissioners of states
40 having statutes or rules substantially similar to subsection (1) of

1 this section and who have agreed in writing not to disclose such
2 information;

3 (c) May receive documents, materials, or information, including
4 otherwise confidential and privileged documents, materials, or
5 information from the national association of insurance commissioners
6 and its affiliates and subsidiaries, and from regulatory and law
7 enforcement officials of other foreign or domestic jurisdictions, and
8 shall maintain as confidential or privileged any document, material,
9 or information received with notice or the understanding that it is
10 confidential or privileged under the laws of the jurisdiction that is
11 the source of the document, material, or information; and

12 (d) Shall enter into written agreements with the national
13 association of insurance commissioners governing sharing and use of
14 information provided pursuant to this chapter consistent with this
15 subsection that shall:

16 (i) Specify procedures and protocols regarding the
17 confidentiality and security of information shared with the national
18 association of insurance commissioners and its affiliates and
19 subsidiaries pursuant to this chapter, including procedures and
20 protocols for sharing by the national association of insurance
21 commissioners with other state, federal, or international regulators;

22 (ii) Specify that ownership of information shared with the
23 national association of insurance commissioners and its affiliates
24 and subsidiaries pursuant to this chapter remains with the
25 commissioner and the national association of insurance commissioners'
26 use of the information is subject to the direction of the
27 commissioner;

28 (iii) Require prompt notice to be given to an insurer whose
29 confidential information in the possession of the national
30 association of insurance commissioners pursuant to this chapter is
31 subject to a request or subpoena to the national association of
32 insurance commissioners for disclosure or production; and

33 (iv) Require the national association of insurance commissioners
34 and its affiliates and subsidiaries to consent to intervention by an
35 insurer in any judicial or administrative action in which the
36 national association of insurance commissioners and its affiliates
37 and subsidiaries may be required to disclose confidential information
38 about the insurer shared with the national association of insurance
39 commissioners and its affiliates and subsidiaries pursuant to this
40 chapter.

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

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

10 (6) Documents, materials, or other information in the possession
11 or control of the national association of insurance commissioners
12 pursuant to this chapter are confidential by law and privileged, are
13 not subject to chapter 42.56 RCW, are not subject to subpoena, and
14 are not subject to discovery or admissible in evidence in any private
15 civil action.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.31B
17 RCW to read as follows:

18 (1) The commissioner is authorized to act as the group-wide
19 supervisor for any internationally active insurance group under this
20 section. However, the commissioner may otherwise acknowledge another
21 regulatory official as the group-wide supervisor where the
22 internationally active insurance group:

23 (a) Does not have substantial insurance operations in the United
24 States;

25 (b) Has substantial insurance operations in the United States,
26 but not in this state; or

27 (c) Has substantial insurance operations in the United States and
28 this state, but the commissioner has determined under the factors set
29 forth in subsections (2) and (6) of this section that the other
30 regulatory official is the appropriate group-wide supervisor.

31 An insurance holding company system that does not otherwise
32 qualify as an internationally active insurance group may request that
33 the commissioner make a determination or acknowledgment as to a
34 group-wide supervisor under this section.

35 (2) In cooperation with other state, federal, and international
36 regulatory agencies, the commissioner must identify a single group-
37 wide supervisor for an internationally active insurance group. The
38 commissioner may determine that the commissioner is the appropriate
39 group-wide supervisor for an internationally active insurance group

1 that conducts substantial insurance operations concentrated in this
2 state. However, the commissioner may acknowledge that a regulatory
3 official from another jurisdiction is the appropriate group-wide
4 supervisor for the internationally active insurance group. The
5 commissioner shall consider the following factors when making a
6 determination or acknowledgment under this subsection:

7 (a) The place of domicile of the insurers within the
8 internationally active insurance group that hold the largest share of
9 the group's written premiums, assets, or liabilities;

10 (b) The place of domicile of the top-tiered insurer(s) in the
11 insurance holding company system of the internationally active
12 insurance group;

13 (c) The location of the executive offices or largest operational
14 offices of the internationally active insurance group;

15 (d) Whether another regulatory official is acting or is seeking
16 to act as the group-wide supervisor under a regulatory system that
17 the commissioner determines to be:

18 (i) Substantially similar to the system of regulation provided
19 under the laws of this state; or

20 (ii) Otherwise sufficient in terms of providing for group-wide
21 supervision, enterprise risk analysis, and cooperation with other
22 regulatory officials; and

23 (e) Whether another regulatory official acting or seeking to act
24 as the group-wide supervisor provides the commissioner with
25 reasonably reciprocal recognition and cooperation.

26 However, a commissioner identified under this section as the group-
27 wide supervisor may determine that it is appropriate to acknowledge
28 another supervisor to serve as the group-wide supervisor. The
29 acknowledgment of the group-wide supervisor must be made after
30 consideration of the factors listed in (a) through (e) of this
31 subsection, and must be made in cooperation with and subject to the
32 acknowledgment of other regulatory officials involved with
33 supervision of members of the internationally active insurance group,
34 and in consultation with the internationally active insurance group.

35 (3) When another regulatory official is acting as the group-wide
36 supervisor of an internationally active insurance group, the
37 commissioner shall acknowledge that regulatory official as the group-
38 wide supervisor. However, in the event of a material change in the
39 internationally active insurance group that results in:

1 (a) The internationally active insurance group's insurers
2 domiciled in this state holding the largest share of the group's
3 premiums, assets, or liabilities; or

4 (b) This state being the place of domicile of the top-tiered
5 insurer(s) in the insurance holding company system of the
6 internationally active insurance group, the commissioner shall make a
7 determination or acknowledgment as to the appropriate group-wide
8 supervisor for the internationally active insurance group under
9 subsection (2) of this section.

10 (4) Under RCW 48.31B.035 the commissioner is authorized to
11 collect from any insurer registered under RCW 48.31B.025 all
12 information necessary to determine whether the commissioner may act
13 as the group-wide supervisor of an internationally active insurance
14 group or if the commissioner may acknowledge another regulatory
15 official to act as the group-wide supervisor. Prior to issuing a
16 determination that an internationally active insurance group is
17 subject to group-wide supervision by the commissioner, the
18 commissioner shall notify the insurer registered under RCW 48.31B.025
19 and the ultimate controlling person within the internationally active
20 insurance group. The internationally active insurance group has no
21 less than thirty days to provide the commissioner with additional
22 information pertinent to the pending determination. The commissioner
23 shall publish in the Washington State Register and on the
24 commissioner's web site the identity of internationally active
25 insurance groups that the commissioner has determined are subject to
26 group-wide supervision by the commissioner.

27 (5) If the commissioner is the group-wide supervisor for an
28 internationally active insurance group, the commissioner is
29 authorized to engage in any of the following group-wide supervision
30 activities:

31 (a) Assess the enterprise risks within the internationally active
32 insurance group to ensure that:

33 (i) The material financial condition and liquidity risks to the
34 members of the internationally active insurance group that are
35 engaged in the business of insurance are identified by management;
36 and

37 (ii) Reasonable and effective mitigation measures are in place;

38 (b) Request from any member of an internationally active
39 insurance group subject to the commissioner's supervision,
40 information necessary and appropriate to assess enterprise risk,

1 including, but not limited to, information about the members of the
2 internationally active insurance group regarding:

3 (i) Governance, risk assessment, and management;

4 (ii) Capital adequacy; and

5 (iii) Material intercompany transactions;

6 (c) Coordinate and, through the authority of the regulatory
7 officials of the jurisdiction where members of the internationally
8 active insurance group are domiciled, compel development and
9 implementation of reasonable measures designed to ensure that the
10 internationally active insurance group is able to timely recognize
11 and mitigate enterprise risks to members of the internationally
12 active insurance group that are engaged in the business of insurance;

13 (d) Communicate with other state, federal, and international
14 regulatory agencies for members within the internationally active
15 insurance group and share relevant information subject to the
16 confidentiality provisions of RCW 48.31B.038, through supervisory
17 colleges as set forth in RCW 48.31B.037 or otherwise;

18 (e) Enter into agreements with or obtain documents from any
19 insurer registered under RCW 48.31B.025, any member of the
20 internationally active insurance group, and any other state, federal,
21 and international regulatory agencies for members of the
22 internationally active insurance group, providing the basis for or
23 otherwise clarifying the commissioner's role as group-wide
24 supervisor, including provisions for resolving disputes with other
25 regulatory officials. The agreements or documentation shall not serve
26 as evidence in any proceeding that any insurer or person within an
27 insurance holding company system not domiciled or incorporated in
28 this state is doing business in this state or is otherwise subject to
29 jurisdiction in this state; and

30 (f) Other group-wide supervision activities, consistent with the
31 authorities and purposes of this subsection (5), as considered
32 necessary by the commissioner.

33 (6) If the commissioner acknowledges that another regulatory
34 official from a jurisdiction that is not accredited by the national
35 association of insurance commissioners is the group-wide supervisor,
36 the commissioner is authorized to reasonably cooperate, through
37 supervisory colleges or otherwise, with group-wide supervision
38 undertaken by the group-wide supervisor. However:

39 (a) The commissioner's cooperation must be in compliance with the
40 laws of this state; and

1 (b) The regulatory official acknowledged as the group-wide
2 supervisor must also recognize and cooperate with the commissioner's
3 activities as a group-wide supervisor for other internationally
4 active insurance groups where applicable. Where the recognition and
5 cooperation is not reasonably reciprocal, the commissioner is
6 authorized to refuse recognition and cooperation.

7 (7) The commissioner is authorized to enter into agreements with
8 or obtain documentation from any insurer registered under RCW
9 48.31B.025, any affiliate of the insurer, and other state, federal,
10 and international regulatory agencies for members of the
11 internationally active insurance group, that provide the basis for or
12 otherwise clarify a regulatory official's role as group-wide
13 supervisor.

14 (8) The commissioner may adopt rules necessary for the
15 implementation and administration of this section.

16 (9) A registered insurer subject to this section is liable for
17 and must pay the reasonable expenses of the commissioner's
18 participation in the administration of this section, including the
19 engagement of attorneys, actuaries, and other professionals and all
20 reasonable travel expenses.

21 **Sec. 4.** RCW 42.56.400 and 2019 c 389 s 102 are each amended to
22 read as follows:

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

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

28 (2) Information obtained and exempted or withheld from public
29 inspection by the health care authority under RCW 41.05.026, whether
30 retained by the authority, transferred to another state purchased
31 health care program by the authority, or transferred by the authority
32 to a technical review committee created to facilitate the
33 development, acquisition, or implementation of state purchased health
34 care under chapter 41.05 RCW;

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

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

1 (5) Information provided under RCW 48.05.510 through 48.05.535,
2 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and
3 48.46.600 through 48.46.625;

4 (6) Examination reports and information obtained by the
5 department of financial institutions from banks under RCW 30A.04.075,
6 from savings banks under RCW 32.04.220, from savings and loan
7 associations under RCW 33.04.110, from credit unions under RCW
8 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and
9 from securities brokers and investment advisers under RCW 21.20.100,
10 all of which is confidential and privileged information;

11 (7) Information provided to the insurance commissioner under RCW
12 48.110.040(3);

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

16 (9) Documents, materials, or information obtained or provided by
17 the insurance commissioner under RCW 48.31B.015(2) (l) and (m),
18 48.31B.025, 48.31B.030, (~~and~~) 48.31B.035, and section 3 of this
19 act, all of which are confidential and privileged;

20 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
21 7.70.140 that, alone or in combination with any other data, may
22 reveal the identity of a claimant, health care provider, health care
23 facility, insuring entity, or self-insurer involved in a particular
24 claim or a collection of claims. For the purposes of this subsection:

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

26 (b) "Health care facility" has the same meaning as in RCW
27 48.140.010(6).

28 (c) "Health care provider" has the same meaning as in RCW
29 48.140.010(7).

30 (d) "Insuring entity" has the same meaning as in RCW
31 48.140.010(8).

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

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

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

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

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

- 1 (15) Documents, materials, or information obtained by the
2 insurance commissioner under RCW 48.17.595;
- 3 (16) Documents, materials, or information obtained by the
4 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and
5 (7) (a) (ii);
- 6 (17) Documents, materials, or information obtained by the
7 insurance commissioner in the commissioner's capacity as receiver
8 under RCW 48.31.025 and 48.99.017, which are records under the
9 jurisdiction and control of the receivership court. The commissioner
10 is not required to search for, log, produce, or otherwise comply with
11 the public records act for any records that the commissioner obtains
12 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as
13 a receiver, except as directed by the receivership court;
- 14 (18) Documents, materials, or information obtained by the
15 insurance commissioner under RCW 48.13.151;
- 16 (19) Data, information, and documents provided by a carrier
17 pursuant to section 1, chapter 172, Laws of 2010;
- 18 (20) Information in a filing of usage-based insurance about the
19 usage-based component of the rate pursuant to RCW 48.19.040(5) (b);
- 20 (21) Data, information, and documents (~~(, other than those~~
21 ~~described in RCW 48.02.210(2) as it existed prior to repeal by~~
22 ~~section 2, chapter 7, Laws of 2017 3rd sp. sess.,)~~) that are
23 submitted to the office of the insurance commissioner by an entity
24 providing health care coverage pursuant to RCW 28A.400.275 (~~(as it~~
25 ~~existed on January 1, 2017, and RCW 48.02.210 as it existed prior to~~
26 ~~repeal by section 2, chapter 7, Laws of 2017 3rd sp. sess.)~~);
- 27 (22) Data, information, and documents obtained by the insurance
28 commissioner under RCW 48.29.017;
- 29 (23) Information not subject to public inspection or public
30 disclosure under RCW 48.43.730(5);
- 31 (24) Documents, materials, or information obtained by the
32 insurance commissioner under chapter 48.05A RCW;
- 33 (25) Documents, materials, or information obtained by the
34 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),
35 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,
36 materials, or information independently qualify for exemption from
37 disclosure as documents, materials, or information in possession of
38 the commissioner pursuant to a financial conduct examination and
39 exempt from disclosure under RCW 48.02.065;

1 (26) Nonpublic personal health information obtained by, disclosed
2 to, or in the custody of the insurance commissioner, as provided in
3 RCW 48.02.068;

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

6 (28) Documents, materials, or other information, including the
7 corporate annual disclosure obtained by the insurance commissioner
8 under RCW 48.195.020;

9 (29) Findings and orders disapproving acquisition of a trust
10 institution under RCW 30B.53.100(3); and

11 (30) All claims data, including health care and financial related
12 data received under RCW 41.05.890, received and held by the health
13 care authority.

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