

HOUSE BILL 1065

State of Washington                      64th Legislature                      2015 Regular Session

By Representatives Kirby and Blake; by request of Insurance Commissioner

Prefiled 01/05/15.

1            AN ACT Relating to the insurer holding company act; amending RCW  
2 48.31B.005,      48.31B.010,      48.31B.015,      48.31B.020,      48.31B.025,  
3 48.31B.030,      48.31B.035,      48.31B.040,      48.31B.050,      48.31B.070,  
4 42.56.400, 48.02.065, 48.13.061, 48.97.005, 48.125.140, 48.155.010,  
5 and 48.155.015; reenacting and amending RCW 42.56.400; adding new  
6 sections to chapter 48.31B RCW; repealing RCW 48.31C.010, 48.31C.020,  
7 48.31C.030,      48.31C.040,      48.31C.050,      48.31C.060,      48.31C.070,  
8 48.31C.080,      48.31C.090,      48.31C.100,      48.31C.110,      48.31C.120,  
9 48.31C.130, 48.31C.140, 48.31C.150, 48.31C.160, 48.31C.900, and  
10 48.31C.901; prescribing penalties; providing effective dates; and  
11 providing an expiration date.

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

13            **Sec. 1.** RCW 48.31B.005 and 1993 c 462 s 2 are each amended to  
14 read as follows:

15            (~~As used in this chapter, the following terms have the meanings~~  
16 ~~set forth in this section, unless the context requires otherwise.~~)  
17 The definitions in this section apply throughout this chapter unless  
18 the context clearly requires otherwise.

19            (1) (~~An~~) "Affiliate" means an affiliate of, or person  
20 (~~a~~)affiliated(~~a~~) with, a specific person, (~~is~~) and includes a  
21 person (~~who~~) that directly, or indirectly through one or more

1 intermediaries, controls, or is controlled by, or is under common  
2 control with, the person specified.

3 ~~((The term))~~ "Commissioner" means the insurance commissioner,  
4 the commissioner's deputies, or the office of the insurance  
5 commissioner, as appropriate.

6 (3) "Control," including the terms "controlling," "controlled  
7 by," and "under common control with," means the possession, direct or  
8 indirect, of the power to direct or cause the direction of the  
9 management and policies of a person, whether through the ownership of  
10 voting securities, by contract other than a commercial contract for  
11 goods or nonmanagement services, or otherwise, unless the power is  
12 the result of an official position with or corporate office held by  
13 the person. Control is presumed to exist if ~~((a))~~ any person,  
14 directly or indirectly, owns, controls, holds with the power to vote,  
15 or holds proxies representing, ten percent or more of the voting  
16 securities of any other person. This presumption may be rebutted by a  
17 showing made in a manner similar to that provided by RCW  
18 48.31B.025(11) that control does not exist in fact. The commissioner  
19 may determine, after furnishing all persons in interest notice and  
20 opportunity to be heard and making specific findings of fact to  
21 support such determination, that control exists in fact,  
22 notwithstanding the absence of a presumption to that effect.

23 ~~((3) An))~~ (4) "Enterprise risk" means any activity,  
24 circumstance, event, or series of events involving one or more  
25 affiliates of an insurer that, if not remedied promptly, is likely to  
26 have a material adverse effect upon the financial condition or  
27 liquidity of the insurer or its insurance holding company system as a  
28 whole including, but not limited to, anything that would cause the  
29 insurer's risk-based capital to fall into company action level as set  
30 forth in RCW 48.05.440 or 48.43.310 or would cause the insurer to be  
31 in hazardous financial condition as defined in WAC 284-16-310.

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

35 ~~((4) The term))~~ (6) "Insurer" ((has the same meaning as set  
36 forth in RCW 48.01.050;)) includes an insurer authorized under  
37 chapter 48.05 RCW, a fraternal mutual insurer or society holding a  
38 license under RCW 48.36A.290, a health care service contractor  
39 registered under chapter 48.44 RCW, a health maintenance organization  
40 registered under chapter 48.46 RCW, and a self-funded multiple

1 employer welfare arrangement under chapter 48.125 RCW, as well as all  
2 persons engaged as, or purporting to be engaged as insurers,  
3 fraternal benefit societies, health care service contractors, health  
4 maintenance organizations, or self-funded multiple employer welfare  
5 arrangements in this state, and to persons in process of organization  
6 to become insurers, fraternal benefit societies, health care service  
7 contractors, health maintenance organizations, or self-funded  
8 multiple employer welfare arrangements, except it does not include  
9 agencies, authorities, or instrumentalities of the United States, its  
10 possessions and territories, the commonwealth of Puerto Rico, the  
11 District of Columbia, or a state or political subdivision of a state.

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

18 ~~((6)A)~~ (8) "Securityholder" means a securityholder of a  
19 specified person ~~((is one))~~ who owns ~~((a))~~ any security of that  
20 person, including common stock, preferred stock, debt obligations,  
21 and any other security convertible into or evidencing the right to  
22 acquire any of the foregoing.

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

26 ~~((8)The term)~~ (10) "Voting security" includes ~~((a))~~ any  
27 security convertible into or evidencing a right to acquire a voting  
28 security.

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

31 (1) A domestic insurer, either by itself or in cooperation with  
32 one or more persons, may organize or acquire one or more  
33 subsidiaries. The subsidiaries may conduct any kind of business or  
34 businesses and their authority to do so is not limited by reason of  
35 the fact that they are subsidiaries of a domestic insurer.

36 (2) In addition to investments in common stock, preferred stock,  
37 debt obligations, and other securities permitted under this title, a  
38 domestic insurer may also:

1       (a) Invest in common stock, preferred stock, debt obligations,  
2 and other securities of one or more subsidiaries, amounts which do  
3 not exceed the lesser of ten percent of the insurer's assets or fifty  
4 percent of the insurer's surplus as regards policyholders, provided  
5 that, after such investments, the insurer's surplus as regards  
6 policyholders will be reasonable in relation to the insurer's  
7 outstanding liabilities and adequate to meet its financial needs. In  
8 calculating the amount of such investments, investments in domestic  
9 or foreign insurance subsidiaries, health maintenance organizations,  
10 and health care service contractors are excluded, and there is  
11 included:

12       (i) Total net moneys or other consideration expended and  
13 obligations assumed in the acquisition or formation of a subsidiary,  
14 including all organizational expenses and contributions to capital  
15 and surplus of the subsidiary whether or not represented by the  
16 purchase of capital stock or issuance of other securities;

17       (ii) All amounts expended in acquiring additional common stock,  
18 preferred stock, debt obligations, and other securities; and

19       (iii) All contributions to the capital and surplus of a  
20 subsidiary subsequent to its acquisition or formation;

21       (b) Invest any amount in common stock, preferred stock, debt  
22 obligations, and other securities of one or more subsidiaries engaged  
23 or organized to engage exclusively in the ownership and management of  
24 assets authorized as investments for the insurer provided that each  
25 subsidiary agrees to limit its investments in any asset so that such  
26 investments will not cause the amount of the total investment of the  
27 insurer to exceed any of the investment limitations specified in (a)  
28 of this subsection or chapter 48.13 RCW applicable to the insurer.  
29 For the purpose of this subsection, the total investment of the  
30 insurer includes:

31       (i) Any direct investment by the insurer in an asset;

32       (ii) The insurer's proportionate share of any investment in an  
33 asset by any subsidiary of the insurer, which is calculated by  
34 multiplying the amount of the subsidiary's investment by the  
35 percentage of the ownership of the subsidiary; and

36       (iii) With the approval of the commissioner, any greater amount  
37 in common stock, preferred stock, debt obligations, or other  
38 securities of one or more subsidiaries, provided that after the  
39 investment the insurer's surplus as regards policyholders will be

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

3 (3) Investments in common stock, preferred stock, debt  
4 obligations, or other securities made according to subsection (2) of  
5 this section are not subject to any of the otherwise applicable  
6 restrictions or prohibitions contained in this title applicable to  
7 such investments of insurers.

8 (4) Whether any investment made according to subsection (2) of  
9 this section meets the applicable requirements of that subsection is  
10 to be determined before the investment is made, by calculating the  
11 applicable investment limitations as though the investment had  
12 already been made, taking into account the then outstanding principal  
13 balance on all previous investments in debt obligations, and the  
14 value of all previous investments in equity securities as of the day  
15 they were made, net of any return of capital invested, net including  
16 dividends.

17 (5) If an insurer ceases to control a subsidiary, it shall  
18 dispose of any investment in ((the)) that subsidiary within three  
19 years from the time of the cessation of control or within such  
20 further time as the commissioner may prescribe, unless at any time  
21 after the investment ((has been)) was made, the investment ((meets))  
22 met the requirements for investment under any other section of this  
23 title, and the insurer has notified the commissioner thereof.

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

26 (1)(a) No person other than the issuer may make a tender offer  
27 for or a request or invitation for tenders of, or enter into ((an))  
28 any agreement to exchange securities of, seek to acquire, or acquire,  
29 in the open market or otherwise, voting security of a domestic  
30 insurer if, after the consummation thereof, the person would,  
31 directly or indirectly, or by conversion or by exercise of a right to  
32 acquire, be in control of the insurer((-)) and no person may enter  
33 into an agreement to merge with or otherwise to acquire control of a  
34 domestic insurer or any person controlling a domestic insurer unless,  
35 at the time the offer, request, or invitation is made or the  
36 agreement is entered into, or ((before)) prior to the acquisition of  
37 the securities if no offer or agreement is involved, the person has  
38 filed with the commissioner and has sent to the insurer, a statement  
39 containing the information required by this section and the offer,

1 request, invitation, agreement, or acquisition has been approved by  
2 the commissioner as prescribed in this ~~((section))~~ chapter.

3 (b) For purposes of this section, any controlling person of a  
4 domestic insurer seeking to divest its controlling interest in the  
5 domestic insurer, in any manner, must file with the commissioner,  
6 with a copy to the insurer, confidential notice of its proposed  
7 divestiture at least thirty days prior to the cessation of control.  
8 The commissioner determines whether the person or persons seeking to  
9 divest or acquire a controlling interest in an insurer must file and  
10 obtain approval of the transaction. The information remains  
11 confidential until the conclusion of the transaction unless the  
12 commissioner, in his or her discretion, determines that the  
13 confidential treatment interferes with the enforcement of this  
14 section. If the statement referred to in (a) of this subsection is  
15 otherwise filed, this subsection does not apply.

16 (c) With respect to a transaction subject to this section, the  
17 acquiring person must also file a preacquisition notification with  
18 the commissioner, which must contain the information set forth in RCW  
19 48.31B.020(3)(a). A failure to file the notification may be subject  
20 to penalties specified in RCW 48.31B.020(5)(c).

21 (d) For purposes of this section a domestic insurer includes a  
22 person controlling a domestic insurer unless the person, as  
23 determined by the commissioner, is either directly or through its  
24 affiliates primarily engaged in business other than the business of  
25 insurance. ~~((However, the person shall file a preacquisition~~  
26 ~~notification with the commissioner containing the information set~~  
27 ~~forth in RCW 48.31B.020(3)(a) sixty days before the proposed~~  
28 ~~effective date of the acquisition. Persons who fail to file the~~  
29 ~~required preacquisition notification with the commissioner are~~  
30 ~~subject to the penalties in RCW 48.31B.020(5)(c).))~~ For the purposes  
31 of this section, "person" does not include ~~((a))~~ any securities  
32 broker holding, in usual and customary broker's function, less than  
33 twenty percent of the voting securities of an insurance company or of  
34 ~~((a))~~ any person who controls an insurance company.

35 (2) The statement to be filed with the commissioner under this  
36 section must be made under oath or affirmation and must contain the  
37 following ~~((information))~~:

38 (a) The name and address of each person by whom or on whose  
39 behalf the merger or other acquisition of control referred to in  
40 subsection (1) of this section is to be effected, ~~((hereinafter~~

1 ~~called~~")) and referred to in this section as the acquiring  
2 party((~~7~~)) and:

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

7 (ii) If that person is not an individual, a report of the nature  
8 of its business operations during the past five years or for such  
9 lesser period as the person and any predecessors have been in  
10 existence; an informative description of the business intended to be  
11 done by the person and the person's subsidiaries; (~~(any convictions~~  
12 ~~of crimes during the past ten years;~~) and a list of all individuals  
13 who are or who have been selected to become directors or executive  
14 officers of the person, or who perform or will perform functions  
15 appropriate to those positions. The list must include for each such  
16 individual the information required by (a)(i) of this  
17 subsection((~~7~~));

18 (b) The source, nature, and amount of the consideration used or  
19 to be used in effecting the merger or other acquisition of control, a  
20 description of any transaction (~~(in which)~~) where funds were or are  
21 to be obtained for any such purpose, including ((a)) any pledge of  
22 the insurer's stock((~~7~~)) or the stock of any of its subsidiaries or  
23 controlling affiliates, and the identity of persons furnishing  
24 ((~~the~~)) consideration. However, ((~~where~~)) when a source of ((~~the~~))  
25 consideration is a loan made in the lender's ordinary course of  
26 business, the identity of the lender must remain confidential, if the  
27 person filing the statement so requests((~~7~~));

28 (c) Fully audited financial information as to the earnings and  
29 financial condition of each acquiring party for the preceding five  
30 fiscal years of each acquiring party, or for such lesser period as  
31 the acquiring party and any predecessors have been in existence, and  
32 similar unaudited information as of a date not earlier than ninety  
33 days ((~~before~~)) prior to the filing of the statement((~~7~~));

34 (d) Any plans or proposals that each acquiring party may have to  
35 liquidate the insurer, to sell its assets or merge or consolidate it  
36 with any person, or to make any other material change in its business  
37 or corporate structure or management((~~7~~));

38 (e) The number of shares of any security referred to in  
39 subsection (1) of this section ((~~that~~)) which each acquiring party  
40 proposes to acquire, the terms of the offer, request, invitation,

1 agreement, or acquisition referred to in subsection (1) of this  
2 section, and a statement as to the method by which the fairness of  
3 the proposal was arrived at(~~(-)~~);

4 (f) The amount of each class of any security referred to in  
5 subsection (1) of this section that is beneficially owned or  
6 concerning which there is a right to acquire beneficial ownership by  
7 each acquiring party(~~(-)~~);

8 (g) A full description of any contracts, arrangements, or  
9 understandings with respect to any security referred to in subsection  
10 (1) of this section in which (~~(a)~~) any acquiring party is involved,  
11 including but not limited to transfer of any of the securities, joint  
12 ventures, loan or option arrangements, puts or calls, guarantees of  
13 loans, guarantees against loss or guarantees of profits, division of  
14 losses or profits, or the giving or withholding of proxies. The  
15 description must identify the persons with whom the contracts,  
16 arrangements, or understandings have been entered into(~~(-)~~);

17 (h) A description of the purchase of any security referred to in  
18 subsection (1) of this section during the twelve calendar months  
19 (~~(before)~~) preceding the filing of the statement, by an acquiring  
20 party, including the dates of purchase, names of the purchasers, and  
21 consideration paid or agreed to be paid (~~(for the security-)~~);

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

27 (j) Copies of all tender offers for, requests or invitations for  
28 tenders of, exchange offers for, and agreements to acquire or  
29 exchange any securities referred to in subsection (1) of this  
30 section, and, if distributed, of additional soliciting material  
31 relating to (~~(the securities-)~~) them;

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

38 (l) An agreement by the person required to file the statement  
39 referred to in subsection (1) of this section that it will provide



1 the annual report, specified in RCW 48.31B.025(12), for so long as  
2 control exists;

3 (m) An acknowledgment by the person required to file the  
4 statement referred to in subsection (1) of this section that the  
5 person and all subsidiaries within its control in the insurance  
6 holding company system will provide information to the commissioner  
7 upon request as necessary to evaluate enterprise risk to the insurer;

8 (n) Such additional information as the commissioner may prescribe  
9 by rule as necessary or appropriate for the protection of  
10 policyholders of the insurer or in the public interest((-));

11 (o) If the person required to file the statement referred to in  
12 subsection (1) of this section is a partnership, limited partnership,  
13 syndicate, or other group, the commissioner may require that the  
14 information called for by (a) through ((+)) (n) of this subsection  
15 ((shall)) must be given with respect to each partner of the  
16 partnership or limited partnership, each member of the syndicate or  
17 group, and each person who controls a partner or member. If ((a)) any  
18 partner, member, or person is a corporation((-)) or the person  
19 required to file the statement referred to in subsection (1) of this  
20 section is a corporation, the commissioner may require that the  
21 information called for by (a) through ((+)) (n) of this subsection  
22 ((shall)) must be given with respect to the corporation, each officer  
23 and director of the corporation, and each person who is directly or  
24 indirectly the beneficial owner of more than ten percent of the  
25 outstanding voting securities of the corporation((-));

26 (p) If ((a)) any material change occurs in the facts set forth in  
27 the statement filed with the commissioner and sent to the insurer  
28 under this section, an amendment setting forth the change, together  
29 with copies of all documents and other material relevant to the  
30 change, must be filed with the commissioner and sent to the insurer  
31 within two business days after the person learns of the change.

32 (3) If ((an)) any offer, request, invitation, agreement, or  
33 acquisition referred to in subsection (1) of this section is proposed  
34 to be made by means of a registration statement under the securities  
35 act of 1933 or in circumstances requiring the disclosure of similar  
36 information under the securities exchange act of 1934, or under a  
37 state law requiring similar registration or disclosure, the person  
38 required to file the statement referred to in subsection (1) of this  
39 section may ((use—those)) utilize the documents in furnishing the  
40 information called for by that statement.

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

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

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

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

15 (B) The (~~commissioner may not disapprove the~~) merger or other  
16 acquisition may not be disapproved if the commissioner finds that any  
17 of the situations meeting the criteria provided by RCW  
18 48.31B.020(4)(c) exist; and

19 (C) The commissioner may condition the approval of the merger or  
20 other acquisition on the removal of the basis of disapproval within a  
21 specified period of time;

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

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

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

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

37 (b) (~~The commissioner shall approve an exchange or other~~  
38 ~~acquisition of control referred to in this section within sixty days~~  
39 ~~after he or she declares the statement filed under this section to be~~  
40 ~~complete and after holding a public hearing. At the hearing, the~~

1 ~~person filing the statement, the insurer, and any person whose~~  
2 ~~significant interest is determined by the commissioner to be affected~~  
3 ~~may present evidence, examine and cross-examine witnesses, and offer~~  
4 ~~oral and written arguments and in connection therewith may conduct~~  
5 ~~discovery proceedings in the same manner as is allowed in the~~  
6 ~~superior court of this state. All discovery proceedings must be~~  
7 ~~concluded not later than three days before the commencement of)~~ The  
8 public hearing referred to in (a) of this subsection must be held  
9 within thirty days after the statement required by subsection (1) of  
10 this section is filed, and at least twenty days' notice must be given  
11 by the commissioner to the person filing the statement. Not less than  
12 seven days' notice of the public hearing must be given by the person  
13 filing the statement to the insurer and to such other persons as may  
14 be designated by the commissioner. The commissioner must make a  
15 determination within the sixty-day period preceding the effective  
16 date of the proposed transaction. At the hearing, the person filing  
17 the statement, the insurer, any person to whom notice of the hearing  
18 was sent, and any other person whose interest may be affected has the  
19 right to present evidence, examine, and cross-examine witnesses, and  
20 offer oral and written arguments and in connection therewith are  
21 entitled to conduct discovery proceedings in the same manner as is  
22 presently allowed in the superior court of this state. All discovery  
23 proceedings must be concluded not later than three days prior to the  
24 commencement of the public hearing.

25 (c) If the proposed acquisition of control will require the  
26 approval of more than one commissioner, the public hearing referred  
27 to in (b) of this subsection may be held on a consolidated basis upon  
28 request of the person filing the statement referred to in subsection  
29 (1) of this section. Such person shall file the statement referred to  
30 in subsection (1) of this section with the national association of  
31 insurance commissioners within five days of making the request for a  
32 public hearing. A commissioner may opt out of a consolidated hearing,  
33 and shall provide notice to the applicant of the opt out within ten  
34 days of the receipt of the statement referred to in subsection (1) of  
35 this section. A hearing conducted on a consolidated basis shall be  
36 public and shall be held within the United States before the  
37 commissioners of the states in which the insurers are domiciled. Such  
38 commissioners shall hear and receive evidence. A commissioner may  
39 attend such hearing, in person, or by telecommunication.

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

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

19       (5) This section does not apply to:

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

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

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

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

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

34       (7) The courts of this state ~~((have))~~ are hereby vested with  
35 jurisdiction over every person not resident, domiciled, or authorized  
36 to do business in this state who files a statement with the  
37 commissioner under this section, and over all actions involving that  
38 person arising out of violations of this section, and each such  
39 person is deemed to have performed acts equivalent to and  
40 constituting an appointment by that person of the commissioner to be

1 the person's true and lawful attorney upon whom may be served all  
2 lawful process in an action, suit, or proceeding arising out of  
3 violations of this section. Copies of all (~~such~~) lawful process  
4 (~~shall~~) must be served on the commissioner and transmitted by  
5 registered or certified mail by the commissioner to such person at  
6 the person's last known address.

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

9 (1) The following definitions (~~in this subsection~~) apply  
10 (~~only~~) for the purposes of this section( ~~only~~):

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

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

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

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

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

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

35 (~~(iii))~~) (ii) The acquisition of a person by another person when  
36 neither person is directly nor through affiliates primarily engaged  
37 in the business of insurance, if preacquisition notification is filed  
38 with the commissioner in accordance with subsection (3)(a) of this  
39 section (~~sixty~~) thirty days (~~before~~) prior to the proposed

1 effective date of the acquisition. However, the preacquisition  
2 notification is not required for exclusion from this section if the  
3 acquisition would otherwise be excluded from this section by this  
4 subsection (2)(b);

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

6 ~~((v))~~ (iv) An acquisition if, as an immediate result of the  
7 acquisition:

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

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

11 (C) In no market would the:

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

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

16 For the purpose of this subsection (2)(b)~~((v))~~ of this  
17 ~~subsection))~~ (iv), a ~~((a))~~ market~~((a))~~ means direct written insurance  
18 premium in this state for a line of business as contained in the  
19 annual statement required to be filed by insurers licensed to do  
20 business in this state;

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

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

32 (3) An acquisition covered by subsection (2) of this section may  
33 be subject to an order under subsection (5) of this section unless  
34 the acquiring person files a preacquisition notification and the  
35 waiting period has expired. The acquired person may file a  
36 preacquisition notification. The commissioner must give confidential  
37 treatment to information submitted under this subsection (3) in the  
38 same manner as provided in section 9 of this act.

39 (a) The preacquisition notification must be in such form and  
40 contain such information as prescribed by the national association of

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

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

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

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

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

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

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

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

8	Insurer A	Insurer B
9		
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  
15 four largest insurers is seventy-five percent or more of the market.  
16 Percentages not shown in the tables are interpolated proportionately  
17 to the percentages that are shown. If more than two insurers are  
18 involved, exceeding the total of the two columns in the table is  
19 prima facie evidence of violation of the competitive standard in (a)  
20 of this subsection. For the purpose of this subsection (4)(b)(i) (~~of~~  
21 ~~this subsection~~), the insurer with the largest share of the market  
22 is 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  
26 increased by seven percent or more of the market over a period of  
27 time extending from a base year five to ten years before the  
28 acquisition up to the time of the acquisition. An acquisition or  
29 merger covered under subsection (2) of this section involving two or  
30 more insurers competing in the same market is prima facie evidence of  
31 violation of the competitive standard in (a) of this subsection if:

32 (A) There is a significant trend toward increased concentration  
33 in the market;



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

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

5 (iii) For the purposes of this subsection (4)(b) (~~(of this~~  
6 ~~subsection))~~):

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

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

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

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

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

37 (i) The acquisition will yield substantial economies of scale or  
38 economies in resource use that cannot be feasibly achieved in any  
39 other way, and the public benefits that would arise from the

1 economies exceed the public benefits that would arise from not  
2 lessening competition; or

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

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

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

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

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

15 (A) There is a hearing;

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

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

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

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

34 (iv) An order pursuant to this subsection (5)(a) ~~((of this~~  
35 ~~subsection))~~ does not apply if the acquisition is not consummated.

36 (b) ~~((A))~~ Any person who violates a cease and desist order of the  
37 commissioner under (a) of this subsection and while the order is in  
38 effect, may, after notice and hearing and upon order of the  
39 commissioner, be subject at the discretion of the commissioner to one  
40 or more of the following:

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

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

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

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

9 (6) RCW 48.31B.045 (2) and (3) and (~~48.31B.050~~) 48.31B.055 do  
10 not apply to acquisitions covered under subsection (2) of this  
11 section.

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

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

20 (a) This section;

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

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

27 (~~An~~) Any insurer which is subject to registration under this  
28 section shall register within fifteen days after it becomes subject  
29 to registration, and annually thereafter by May (~~15th~~) 1st of each  
30 year for the previous calendar year, unless the commissioner for good  
31 cause shown extends the time for registration, and then within the  
32 extended time. The commissioner may require (~~an~~) any insurer  
33 authorized to do business in the state that is a member of a holding  
34 company system, (~~but that~~) and which is not subject to registration  
35 under this section, to furnish a copy of the registration statement,  
36 the summary specified in subsection (3) of this section, or other  
37 information filed by the insurance company with the insurance  
38 regulatory authority of its domiciliary jurisdiction.

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

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

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

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

13 (i) Loans, other investments, or purchases, sales, or exchanges  
14 of securities of the affiliates by the insurer or of the insurer by  
15 its affiliates;

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

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

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

22 (v) All management agreements, service contracts, and cost-  
23 sharing arrangements;

24 (vi) Reinsurance agreements;

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

26 (viii) Consolidated tax allocation agreements;

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

30 (e) If requested by the commissioner, the insurer must include  
31 financial statements of or within an insurance holding company  
32 system, including all affiliates. Financial statements may include  
33 but are not limited to annual audited financial statements filed with  
34 the United States securities and exchange commission pursuant to the  
35 securities act of 1933, as amended, or the securities exchange act of  
36 1934, as amended. An insurer required to file financial statements  
37 pursuant to this subsection (2)(e) may satisfy the request by  
38 providing the commissioner with the most recently filed parent  
39 corporation financial statements that have been filed with the United  
40 States securities and exchange commission;

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

4       (g) Statements that the insurer's board of directors oversees  
5 corporate governance and internal controls and that the insurer's  
6 officers or senior management have approved, implemented, and  
7 continue to maintain and monitor corporate governance and internal  
8 control procedures; and

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

10       (3) All registration statements must contain a summary outlining  
11 all items in the current registration statement representing changes  
12 from the prior registration statement.

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

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

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

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

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

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

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

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

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

30 ~~((12))~~ A disclaimer of affiliation is deemed to have been granted  
31 unless the commissioner, within thirty days following receipt of a  
32 complete disclaimer, notifies the filing party the disclaimer is  
33 disallowed. In the event of disallowance, the disclaiming party may  
34 request an administrative hearing, which shall be granted. The  
35 disclaiming party is relieved of its duty to register under this  
36 section if approval of the disclaimer has been granted by the  
37 commissioner, or if the disclaimer is deemed to have been approved.

38 (12) The ultimate controlling person of every insurer subject to  
39 registration shall also file an annual enterprise risk report. The  
40 report must, to the best of the ultimate controlling person's

1 knowledge and belief, identify the material risks within the  
2 insurance holding company system that could pose enterprise risk to  
3 the insurer. The report must be filed with the lead state  
4 commissioner of the insurance holding company system as determined by  
5 the procedures within the financial analysis handbook adopted by the  
6 national association of insurance commissioners.

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

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

13 (1)(a) Transactions within ((a)) an insurance holding company  
14 system to which an insurer subject to registration is a party are  
15 subject to the following standards:

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

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

20 (iii) Charges or fees for services performed must be fair and  
21 reasonable;

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

25 ~~((iv))~~ (v) The books, accounts, and records of each party to  
26 all such transactions must be so maintained as to clearly and  
27 accurately disclose the nature and details of the transactions((7))  
28 including such accounting information as is necessary to support the  
29 reasonableness of the charges or fees to the respective parties; and

30 ~~((v))~~ (vi) The insurer's surplus regarding policyholders  
31 ((after)) following any dividends or distributions to shareholders or  
32 affiliates must be reasonable in relation to the insurer's  
33 outstanding liabilities and adequate to its financial needs.

34 (b) The following transactions involving a domestic insurer and a  
35 person in its insurance holding company system, including amendments  
36 or modifications of affiliate agreements previously filed pursuant to  
37 this section, which are subject to the materiality standards  
38 contained in this subsection (1)(b), may not be entered into unless  
39 the insurer has notified the commissioner in writing of its intention

1 to enter into the transaction (~~and the commissioner declares the~~  
2 ~~notice to be sufficient~~) at least (~~sixty~~) thirty days before, or  
3 such shorter period as the commissioner may permit, and the  
4 commissioner has not disapproved it within that period. The notice  
5 for amendments or modifications must include the reasons for the  
6 change and the financial impact on the domestic insurer. Informal  
7 notice must be reported, within thirty days after a termination of a  
8 previously filed agreement, to the commissioner for determination of  
9 the type of filing required, if any:

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

13 (A) With respect to nonlife insurers, the lesser of three percent  
14 of the insurer's admitted assets or twenty-five percent of surplus as  
15 regards policyholders;

16 (B) With respect to life insurers, three percent of the insurer's  
17 admitted assets; each as of (~~the 31st day of the previous~~) December  
18 31st next preceding;

19 (ii) Loans or extensions of credit to any person who is not an  
20 affiliate, where the insurer makes the loans or extensions of credit  
21 with the agreement or understanding that the proceeds of the  
22 transactions, in whole or in substantial part, are to be used to make  
23 loans or extensions of credit to, to purchase assets of, or to make  
24 investments in, an affiliate of the insurer making the loans or  
25 extensions of credit if the transactions are equal to or exceed:

26 (A) With respect to nonlife insurers, the lesser of three percent  
27 of the insurer's admitted assets or twenty-five percent of surplus as  
28 regards policyholders;

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

32 (iii) Reinsurance agreements or modifications (~~to them~~)  
33 thereto, including:

34 (A) All reinsurance pooling agreements;

35 (B) Agreements in which the reinsurance premium or a change in  
36 the insurer's liabilities, or the projected reinsurance premium or a  
37 change in the insurer's liabilities in any of the next three years,  
38 equals or exceeds five percent of the insurer's surplus as regards  
39 policyholders, as of (~~the 31st day of the previous~~) December 31st  
40 next preceding, including those agreements that may require as



1 consideration the transfer of assets from an insurer to a  
2 nonaffiliate, if an agreement or understanding exists between the  
3 insurer and nonaffiliate that any portion of the assets will be  
4 transferred to one or more affiliates of the insurer;

5 (iv) All management agreements, service contracts, tax allocation  
6 agreements, guarantees, and all cost-sharing arrangements; ((and))

7 (v) Guarantees when made by a domestic insurer. However, a  
8 guarantee which is quantifiable as to amount is not subject to the  
9 notice requirements of this subsection (1)(b)(v) unless it exceeds  
10 the lesser of one-half of one percent of the insurer's admitted  
11 assets or ten percent of surplus as regards policyholders as of  
12 December 31st next preceding. Further, all guarantees which are not  
13 quantifiable as to amount are subject to the notice requirements of  
14 this subsection (1)(b)(v);

15 (vi) Direct or indirect acquisitions or investments in a person  
16 that controls the insurer or in an affiliate of the insurer in an  
17 amount which, together with its present holdings in such investments,  
18 exceeds two and one-half percent of the insurer's surplus to  
19 policyholders. Direct or indirect acquisitions or investments in  
20 subsidiaries acquired according to RCW 48.31B.010 or authorized  
21 according to chapter 48.13 RCW, or in nonsubsidiary insurance  
22 affiliates that are subject to this chapter, are exempt from this  
23 requirement; and

24 (vii) Any material transactions, specified by rule, ((that))  
25 which the commissioner determines may adversely affect the interests  
26 of the insurer's policyholders.

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

31 (c) A domestic insurer may not enter into transactions ((that))  
32 which are part of a plan or series of like transactions with persons  
33 within the insurance holding company system if the purpose of those  
34 separate transactions is to avoid the statutory threshold amount and  
35 thus avoid the review that would occur otherwise. If the commissioner  
36 determines that the separate transactions were entered into over  
37 ((a)) any twelve-month period for that purpose, the commissioner may  
38 ~~((apply for an order as described in))~~ exercise his or her authority  
39 under RCW 48.31B.045((+1)).

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

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

10 (2)(a) (~~No~~) A domestic insurer (~~may~~) shall not pay an  
11 extraordinary dividend or make any other extraordinary distribution  
12 to its shareholders until(~~+~~~~+~~) thirty days after the commissioner  
13 declares that he or she has received (~~sufficient~~) notice of the  
14 declaration thereof and has not within that period disapproved the  
15 payment(~~+~~), or (~~+~~~~+~~) until the commissioner has approved the  
16 payment within the thirty-day period.

17 (b) For purposes of this section, an extraordinary dividend or  
18 distribution is (~~a~~) any dividend or distribution of cash or other  
19 property, whose fair market value(~~+~~) together with that of other  
20 dividends or distributions made within the (~~period of~~) preceding  
21 twelve (~~consecutive~~) months (~~ending on the date on which the~~  
22 ~~proposed dividend is scheduled for payment or distribution,~~) exceeds  
23 the (~~greater~~) lesser of:

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

27 (ii) The net gain from operations of the (~~company~~) insurer, if  
28 the (~~company~~) insurer is a life insurance company, or the net  
29 income if the company is not a life insurance company, not including  
30 realized capital gains for the twelve month period ending (~~the 31st~~  
31 ~~day of the previous~~) December next preceding, but does not include  
32 pro rata distributions of any class of the (~~company's~~) insurer's  
33 own securities.

34 (c) In determining whether a dividend or distribution is  
35 extraordinary, an insurer other than a life insurer may carry forward  
36 net income from the previous two calendar years that has not already  
37 been paid out as dividends. This carry forward provision must be  
38 computed by taking the net income from the second and third preceding  
39 calendar years, not including realized capital gains, less dividends  
40 paid in the second and immediate preceding calendar years.

1        (d) Notwithstanding any other provision of law, an insurer may  
2 declare an extraordinary dividend or distribution that is conditional  
3 upon the commissioner's approval. The declaration confers no rights  
4 upon shareholders until: (i) The commissioner has approved the  
5 payment of the dividend or distribution; or (ii) the commissioner has  
6 not disapproved the payment within the thirty-day period referred to  
7 in (a) of this subsection.

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

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

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

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

20        (d) The extent of the geographical dispersion of the insurer's  
21 insured risks;

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

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

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

27        (h) The surplus as regards policyholders maintained by other  
28 comparable insurers;

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

30        (j) The quality and liquidity of investments in affiliates. The  
31 commissioner may ~~((discount))~~ treat any such investment ~~((or may~~  
32 ~~treat any such investment))~~ as a disallowed asset for purposes of  
33 determining the adequacy of surplus as regards policyholders whenever  
34 in ~~((his or her))~~ the judgment of the commissioner the investment so  
35 warrants ~~((; and~~

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

38        (4)(a) Notwithstanding the control of a domestic insurer by any  
39 person, the officers and directors of the insurer are not thereby  
40 relieved of any obligation or liability to which they would otherwise

1 be subject by law, and the insurer must be managed so as to assure  
2 its separate operating identity consistent with this title.

3 (b) This section does not preclude a domestic insurer from having  
4 or sharing a common management or cooperative or joint use of  
5 personnel, property, or services with one or more other persons under  
6 arrangements meeting the standards of subsection (1)(a) of this  
7 section.

8 (c) At least one-third of a domestic insurer's directors and at  
9 least one-third of the members of each committee of the insurer's  
10 board of directors must be persons who are not: (i) Officers or  
11 employees of the insurer or of any entity that controls, is  
12 controlled by, or is under common control with the insurer; or (ii)  
13 beneficial owners of a controlling interest in the voting securities  
14 of the insurer or of any such entity. A quorum for transacting  
15 business at a meeting of the insurer's board of directors or any  
16 committee of the board of directors must include at least one such  
17 person.

18 (d) The board of directors of a domestic insurer shall establish  
19 one or more committees comprised solely of directors who are not  
20 officers or employees of the insurer or of any entity controlling,  
21 controlled by, or under common control with the insurer and who are  
22 not beneficial owners of a controlling interest in the voting stock  
23 of the insurer or any such entity. The committee or committees have  
24 responsibility for nominating candidates for director for election by  
25 shareholders or policyholders, evaluating the performance of officers  
26 deemed to be principal officers of the insurer, and recommending to  
27 the board of directors the selection and compensation of the  
28 principal officers.

29 (e) The provisions of (c) and (d) of this subsection do not apply  
30 to a domestic insurer if the person controlling the insurer, such as  
31 an insurer, a mutual holding company, or publicly held corporation,  
32 has a board of directors and committees thereof that meet the  
33 requirements of (c) and (d) of this subsection with respect to such  
34 controlling entity.

35 (f) An insurer may make application to the commissioner for a  
36 waiver from the requirements of this subsection, if the insurer's  
37 annual direct written and assumed premium, excluding premiums  
38 reinsured with the federal crop insurance corporation and federal  
39 flood program, is less than three hundred million dollars. An insurer  
40 may also make application to the commissioner for a waiver from the

1 requirements of this subsection based upon unique circumstances. The  
2 commissioner may consider various factors including, but not limited  
3 to, the type of business entity, volume of business written,  
4 availability of qualified board members, or the ownership or  
5 organizational structure of the entity.

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

8 (1) Subject to the limitation contained in this section and in  
9 addition to the powers that the commissioner has under chapter 48.03  
10 RCW relating to the examination of insurers, the commissioner (~~also~~  
11 ~~may order an insurer registered under RCW 48.31B.025 to produce such~~  
12 ~~records, books, or other information papers in the possession of the~~  
13 ~~insurer or its affiliates as are reasonably necessary to ascertain~~  
14 ~~the financial condition of the insurer or to determine compliance~~  
15 ~~with this title. If the insurer fails to comply with the order, the~~  
16 ~~commissioner may examine the affiliates to obtain the information))  
17 has the power to examine any insurer registered under RCW 48.31B.025  
18 and its affiliates to ascertain the financial condition of the  
19 insurer, including the enterprise risk to the insurer by the ultimate  
20 controlling party, or by any entity or combination of entities within  
21 the insurance holding company system, or by the insurance holding  
22 company system on a consolidated basis.~~

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

27 (b) To determine compliance with this title, the commissioner may  
28 order any insurer registered under RCW 48.31B.025 to produce  
29 information not in the possession of the insurer if the insurer can  
30 obtain access to such information pursuant to contractual  
31 relationships, statutory obligations, or other method. In the event  
32 the insurer cannot obtain the information requested by the  
33 commissioner, the insurer shall provide the commissioner a detailed  
34 explanation of the reason that the insurer cannot obtain the  
35 information and the identity of the holder of information. Whenever  
36 it appears to the commissioner that the detailed explanation is  
37 without merit, the commissioner may require, after notice and  
38 hearing, the insurer to pay a fine of ten thousand dollars for each  
39 day's delay, or may suspend or revoke the insurer's license. The

1 commissioner shall transfer the fine collected under this section to  
2 the state treasurer for deposit into the general fund.

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

10 ~~((+3))~~ (4) Notwithstanding the provisions under RCW 48.03.060,  
11 each registered insurer producing for examination records, books, and  
12 papers under subsection (1) of this section (~~are~~) is liable for and  
13 (~~shall~~) must pay the expense of the examination (~~in accordance~~  
14 with RCW 48.03.060)).

15 (5) In the event the insurer fails to comply with an order, the  
16 commissioner has the power to examine the affiliates to obtain the  
17 information. The commissioner also has the power to issue subpoenas,  
18 to administer oaths, and to examine under oath any person for  
19 purposes of determining compliance with this section. Upon the  
20 failure or refusal of any person to obey a subpoena, the commissioner  
21 may petition a court of competent jurisdiction, and upon proper  
22 showing, the court may enter an order compelling the witness to  
23 appear and testify or produce documentary evidence. Failure to obey  
24 the court order is punishable as contempt of court. Every person is  
25 required to attend as a witness at the place specified in the  
26 subpoena, when subpoenaed, anywhere within the state. Every person is  
27 entitled to the same fees and mileage, if claimed, as a witness as  
28 provided in RCW 48.03.070. The fees, mileage, and other actual  
29 expenses, if any, necessarily incurred in securing the attendance of  
30 witnesses, and their testimony, must be itemized and charged against,  
31 and be paid by, the company being examined.

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

34 (1) With respect to any insurer registered under RCW 48.31B.025,  
35 and in accordance with subsection (3) of this section, the  
36 commissioner has the power to participate in a supervisory college  
37 for any domestic insurer that is part of an insurance holding company  
38 system with international operations in order to determine compliance  
39 by the insurer with this title. The powers of the commissioner with

1 respect to supervisory colleges include, but are not limited to, the  
2 following:

3 (a) Initiating the establishment of a supervisory college;

4 (b) Clarifying the membership and participation of other  
5 supervisors in the supervisory college;

6 (c) Clarifying the functions of the supervisory college and the  
7 role of other regulators, including the establishment of a group-wide  
8 supervisor;

9 (d) Coordinating the ongoing activities of the supervisory  
10 college, including planning meetings, supervisory activities, and  
11 processes for information sharing; and

12 (e) Establishing a crisis management plan.

13 (2) Each registered insurer subject to this section is liable for  
14 and must pay the reasonable expenses of the commissioner's  
15 participation in a supervisory college in accordance with subsection  
16 (3) of this section, including reasonable travel expenses. For  
17 purposes of this section, a supervisory college may be convened as  
18 either a temporary or permanent forum for communication and  
19 cooperation between the regulators charged with the supervision of  
20 the insurer or its affiliates, and the commissioner may establish a  
21 regular assessment to the insurer for the payment of these expenses.

22 (3) In order to assess the business strategy, financial position,  
23 legal and regulatory position, risk exposure, risk management, and  
24 governance processes, and as part of the examination of individual  
25 insurers in accordance with RCW 48.31B.035, the commissioner may  
26 participate in a supervisory college with other regulators charged  
27 with supervision of the insurer or its affiliates, including other  
28 state, federal, and international regulatory agencies. The  
29 commissioner may enter into agreements in accordance with section  
30 9(3) of this act providing the basis for cooperation between the  
31 commissioner and the other regulatory agencies, and the activities of  
32 the supervisory college. This section does not delegate to the  
33 supervisory college the authority of the commissioner to regulate or  
34 supervise the insurer or its affiliates within its jurisdiction.

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

37 (1) Documents, materials, or other information in the possession  
38 or control of the commissioner that are obtained by or disclosed to  
39 the commissioner or any other person in the course of an examination

1 or investigation made pursuant to RCW 48.31B.035 and all information  
2 reported pursuant to RCW 48.31B.015(2) (l) and (m), 48.31B.025, and  
3 48.31B.030 are confidential by law and privileged, are not subject to  
4 chapter 42.56 RCW, are not subject to subpoena, and are not subject  
5 to discovery or admissible in evidence in any private civil action.  
6 However, the commissioner is authorized to use the documents,  
7 materials, or other information in the furtherance of any regulatory  
8 or legal action brought as a part of the commissioner's official  
9 duties. The commissioner shall not otherwise make the documents,  
10 materials, or other information public without the prior written  
11 consent of the insurer to which it pertains unless the commissioner,  
12 after giving the insurer and its affiliates who would be affected  
13 thereby, notice and opportunity to be heard, determines that the  
14 interest of policyholders, shareholders, or the public is served by  
15 the publication thereof, in which event the commissioner may publish  
16 all or any part in such manner as may be deemed 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 section 8 of this act, provided the recipient agrees in  
34 writing 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 **Sec. 10.** RCW 48.31B.040 and 1993 c 462 s 9 are each amended to  
17 read as follows:

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

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

25 (1) The commissioner shall require, after notice and hearing, an  
26 insurer failing, without just cause, to file a registration statement  
27 as required in this chapter, to pay a (~~penalty~~) fine of not more  
28 than ten thousand dollars per day. The maximum (~~penalty~~) fine under  
29 this section is one million dollars. The commissioner may reduce the  
30 (~~penalty~~) fine if the insurer demonstrates to the commissioner that  
31 the imposition of the (~~penalty~~) fine would constitute a financial  
32 hardship to the insurer. The commissioner shall pay a fine collected  
33 under this section to the state treasurer for the account of the  
34 general fund.

35 (2) Every director or officer of an insurance holding company  
36 system who knowingly violates this chapter, or participates in, or  
37 assents to, or who knowingly permits an officer or agent of the  
38 insurer to engage in transactions or make investments that have not

1 been properly reported or submitted under RCW 48.31B.025(1) or  
2 48.31B.030(1)(b) or (2), or that violate this chapter, shall pay, in  
3 their individual capacity, a (~~civil forfeiture~~) fine of not more  
4 than ten thousand dollars per violation, after notice and hearing  
5 before the commissioner. In determining the amount of the (~~civil~~  
6 ~~forfeiture~~) fine, the commissioner shall take into account the  
7 appropriateness of the forfeiture with respect to the gravity of the  
8 violation, the history of previous violations, and such other matters  
9 as justice may require.

10 (3) Whenever it appears to the commissioner that an insurer  
11 subject to this chapter or a director, officer, employee, or agent of  
12 the insurer has engaged in a transaction or entered into a contract  
13 that is subject to RCW 48.31B.030 and that would not have been  
14 approved had approval been requested, the commissioner may order the  
15 insurer to cease and desist immediately any further activity under  
16 that transaction or contract. After notice and hearing the  
17 commissioner may also order the insurer to void any such contracts  
18 and restore the status quo if that action is in the best interest of  
19 the policyholders, creditors, or the public.

20 (4) Whenever it appears to the commissioner that an insurer or a  
21 director, officer, employee, or agent of the insurer has committed a  
22 willful violation of this chapter, the commissioner may refer the  
23 matter to the prosecuting attorney of Thurston county or the county  
24 in which the principal office of the insurer is located. An insurer  
25 that willfully violates this chapter may be fined not more than one  
26 million dollars. Any individual who willfully violates this chapter  
27 may be fined in his or her individual capacity not more than ten  
28 thousand dollars, or be imprisoned for not more than three years, or  
29 both.

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

39 (6) Whenever it appears to the commissioner that any person has  
40 committed a violation of RCW 48.31B.015 and which prevents the full

1 understanding of the enterprise risk to the insurer by affiliates or  
2 by the insurance holding company system, the violation may serve as  
3 an independent basis for disapproving dividends or distributions and  
4 for placing the insurer under an order of supervision in accordance  
5 with RCW 48.31.400.

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

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

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

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

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

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

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

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

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

34 (5) Information provided under RCW 48.05.510 through 48.05.535,  
35 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and  
36 48.46.600 through 48.46.625;

37 (6) Examination reports and information obtained by the  
38 department of financial institutions from banks under RCW

1 ((~~30.04.075~~)) 30A.04.075, from savings banks under RCW 32.04.220,  
2 from savings and loan associations under RCW 33.04.110, from credit  
3 unions under RCW 31.12.565, from check cashers and sellers under RCW  
4 31.45.030(3), and from securities brokers and investment advisers  
5 under RCW 21.20.100, all of which is confidential and privileged  
6 information;

7 (7) Information provided to the insurance commissioner under RCW  
8 48.110.040(3);

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

12 (~~(Confidential proprietary and trade secret information~~  
13 ~~provided to the commissioner under RCW 48.31C.020 through 48.31C.050~~  
14 ~~and 48.31C.070)) Documents, materials, or information obtained by the  
15 insurance commissioner under RCW 48.31B.015(2) (l) and (m),  
16 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential  
17 and privileged;~~

18 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
19 7.70.140 that, alone or in combination with any other data, may  
20 reveal the identity of a claimant, health care provider, health care  
21 facility, insuring entity, or self-insurer involved in a particular  
22 claim or a collection of claims. For the purposes of this subsection:

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

24 (b) "Health care facility" has the same meaning as in RCW  
25 48.140.010(6).

26 (c) "Health care provider" has the same meaning as in RCW  
27 48.140.010(7).

28 (d) "Insuring entity" has the same meaning as in RCW  
29 48.140.010(8).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Sec. 14.** RCW 42.56.400 and 2013 c 65 s 5 are each amended to  
27 read 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  
31 appeals that are related to appeals of crime victims' compensation  
32 claims filed 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  
37 to a technical review committee created to facilitate the  
38 development, acquisition, or implementation of state purchased health  
39 care under chapter 41.05 RCW;

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

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

5 (5) Information provided under RCW 48.05.510 through 48.05.535,  
6 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and  
7 48.46.600 through 48.46.625;

8 (6) Examination reports and information obtained by the  
9 department of financial institutions from banks under RCW  
10 (~~30.04.075~~) 30A.04.075, from savings banks under RCW 32.04.220,  
11 from savings and loan associations under RCW 33.04.110, from credit  
12 unions under RCW 31.12.565, from check cashers and sellers under RCW  
13 31.45.030(3), and from securities brokers and investment advisers  
14 under RCW 21.20.100, all of which is confidential and privileged  
15 information;

16 (7) Information provided to the insurance commissioner under RCW  
17 48.110.040(3);

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

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

27 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
28 7.70.140 that, alone or in combination with any other data, may  
29 reveal the identity of a claimant, health care provider, health care  
30 facility, insuring entity, or self-insurer involved in a particular  
31 claim or a collection of claims. For the purposes of this subsection:

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

33 (b) "Health care facility" has the same meaning as in RCW  
34 48.140.010(6).

35 (c) "Health care provider" has the same meaning as in RCW  
36 48.140.010(7).

37 (d) "Insuring entity" has the same meaning as in RCW  
38 48.140.010(8).

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

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

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

- 36 (1) Documents, materials, or other information as described in  
37 either subsection (5) or (6), or both, of this section are  
38 confidential by law and privileged, are not subject to public  
39 disclosure under chapter 42.56 RCW, and are not subject to subpoena



1 directed to the commissioner or any person who received documents,  
2 materials, or other information while acting under the authority of  
3 the commissioner. The commissioner is authorized to use such  
4 documents, materials, or other information in the furtherance of any  
5 regulatory or legal action brought as a part of the commissioner's  
6 official duties. The confidentiality and privilege created by this  
7 section and RCW 42.56.400(~~(9)~~) (8) applies only to the  
8 commissioner, any person acting under the authority of the  
9 commissioner, the national association of insurance commissioners and  
10 its affiliates and subsidiaries, regulatory and law enforcement  
11 officials of other states and nations, the federal government, and  
12 international authorities.

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

19 (3) The commissioner:

20 (a) May share documents, materials, or other information,  
21 including the confidential and privileged documents, materials, or  
22 information subject to subsection (1) of this section, with (i) the  
23 national association of insurance commissioners and its affiliates  
24 and subsidiaries, and (ii) regulatory and law enforcement officials  
25 of other states and nations, the federal government, and  
26 international authorities, if the recipient agrees to maintain the  
27 confidentiality and privileged status of the document, material, or  
28 other information;

29 (b) May receive documents, materials, or information, including  
30 otherwise either confidential or privileged, or both, documents,  
31 materials, or information, from (i) the national association of  
32 insurance commissioners and its affiliates and subsidiaries, and (ii)  
33 regulatory and law enforcement officials of other states and nations,  
34 the federal government, and international authorities and shall  
35 maintain as confidential and privileged any document, material, or  
36 information received that is either confidential or privileged, or  
37 both, under the laws of the jurisdiction that is the source of the  
38 document, material, or information; and

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

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

6 (5) Documents, materials, or information, which is either  
7 confidential or privileged, or both, which has been provided to the  
8 commissioner by (a) the national association of insurance  
9 commissioners and its affiliates and subsidiaries, (b) regulatory or  
10 law enforcement officials of other states and nations, the federal  
11 government, or international authorities, or (c) agencies of this  
12 state, is confidential and privileged only if the documents,  
13 materials, or information is protected from disclosure by the  
14 applicable laws of the jurisdiction that is the source of the  
15 document, material, or information.

16 (6) Working papers, documents, materials, or information produced  
17 by, obtained by, or disclosed to the commissioner or any other person  
18 in the course of a financial or market conduct examination, or in the  
19 course of financial analysis or market conduct desk audit, are not  
20 required to be disclosed by the commissioner unless cited by the  
21 commissioner in connection with an agency action as defined in RCW  
22 34.05.010(3). The commissioner shall notify a party that produced the  
23 documents, materials, or information five business days before  
24 disclosure in connection with an agency action. The notified party  
25 may seek injunctive relief in any Washington state superior court to  
26 prevent disclosure of any documents, materials, or information it  
27 believes is confidential or privileged. In civil actions between  
28 private parties or in criminal actions, disclosure to the  
29 commissioner under this section does not create any privilege or  
30 claim of confidentiality or waive any existing privilege or claim of  
31 confidentiality.

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

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

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

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

6 (8) Any person may petition a Washington state superior court to  
7 allow inspection of information exempt from public disclosure under  
8 subsection (6) of this section when the information is connected to  
9 allegations of negligence or malfeasance by the commissioner related  
10 to a financial or market conduct examination. The court shall conduct  
11 an in-camera review after notifying the commissioner and every party  
12 that produced the information. The court may order the commissioner  
13 to allow the petitioner to have access to the information provided  
14 the petitioner maintains the confidentiality of the information. The  
15 petitioner must not disclose the information to any other person,  
16 except upon further order of the court. After conducting a regular  
17 hearing, the court may order that the information can be disclosed  
18 publicly if the court finds that there is a public interest in the  
19 disclosure of the information and the exemption of the information  
20 from public disclosure is clearly unnecessary to protect any  
21 individual's right of privacy or any vital governmental function.

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

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

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

33 (2) Bonds, debt-like preferred stock, and other evidences of  
34 indebtedness of governmental units in the United States or Canada, or  
35 the instrumentalities of the governmental units, or private business  
36 entities domiciled in the United States or Canada, including asset-  
37 backed securities and securities valuation office listed mutual  
38 funds;

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

6 (4) Common stock or equity-like preferred stock or equity  
7 interests in any United States or Canadian business entity, or shares  
8 of mutual funds registered with the securities and exchange  
9 commission of the United States under the investment company act of  
10 1940, other than securities valuation office listed mutual funds,  
11 and, subsidiaries, as defined in RCW 48.31B.005 (~~or 48.31C.010~~),  
12 engaged exclusively in the following businesses:

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

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

19 (c) Rendering management, sales, or other related services to any  
20 investment company subject to the federal investment company act of  
21 1940, as amended;

22 (d) Rendering investment advice;

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

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

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

35 (h) Acting as administrative agent for a government  
36 instrumentality which is performing an insurance function or is  
37 responsible for a health or welfare program;

38 (i) Financing of insurance premiums;

39 (j) Any other business activity reasonably ancillary to an  
40 insurance business;

- 1 (k) Owning one or more subsidiary;
- 2 (i) Insurers, health care service contractors, or health  
3 maintenance organizations to the extent permitted by this chapter;
- 4 (ii) Businesses specified in (a) through (k) of this subsection  
5 inclusive; or
- 6 (iii) Any combination of such insurers and businesses;
- 7 (5) Real property necessary for the convenient transaction of the  
8 insurer's business;
- 9 (6) Real property, together with the fixtures, furniture,  
10 furnishings, and equipment pertaining thereto in the United States or  
11 Canada, which produces or after suitable improvement can reasonably  
12 be expected to produce income;
- 13 (7) Loans, securities, or other investments of the types  
14 described in subsections (1) through (6) of this section in national  
15 association of insurance commissioners securities valuation office 1  
16 debt rated countries other than the United States and Canada;
- 17 (8) Bonds or other evidences of indebtedness of international  
18 development organizations of which the United States is a member;
- 19 (9) Loans upon the security of the insurer's own policies in  
20 amounts that are adequately secured by the policies and that in no  
21 case exceed the surrender values of the policies;
- 22 (10) Tangible personal property under contract of sale or lease  
23 under which contractual payments may reasonably be expected to return  
24 the principal of and provide earnings on the investment within its  
25 anticipated useful life;
- 26 (11) Other investments the commissioner authorizes by rule; and
- 27 (12) Investments not otherwise permitted by this section, and not  
28 specifically prohibited by statute, to the extent of not more than  
29 five percent of the first five hundred million dollars of the  
30 insurer's admitted assets plus ten percent of the insurer's admitted  
31 assets exceeding five hundred million dollars.

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

34 Unless the context clearly requires otherwise, the definitions in  
35 this section apply throughout this chapter.

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

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

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

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

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

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

15 (b) Residual market pools and joint underwriting associations;  
16 and

17 (c) Captive insurers. For the purposes of this chapter, captive  
18 insurers are insurance companies owned by another organization(~~(7)~~)  
19 whose exclusive purpose is to insure risks of the parent organization  
20 and affiliated companies or, in the case of groups and associations,  
21 insurance organizations owned by the insureds whose exclusive purpose  
22 is to insure risks to member organizations or group members, or both,  
23 and their affiliates.

24 (6) "Producer" means an insurance broker or brokers or any other  
25 person, firm, association, or corporation when, for compensation,  
26 commission, or other thing of value, the person, firm, association,  
27 or corporation acts or aids in any manner in soliciting, negotiating,  
28 or procuring the making of an insurance contract on behalf of an  
29 insured other than the person, firm, association, or corporation.

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

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

36 (2) Every self-funded multiple employer welfare arrangement shall  
37 submit its books and records relating to its operation for financial  
38 condition and market conduct examinations and in every way facilitate  
39 them. For the purpose of examinations, the commissioner may issue

1 subpoenas, administer oaths, and examine the officers and principals  
2 of the (~~(self-funded))~~) self-funded multiple employer welfare  
3 arrangement.

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

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

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

16 (5) Whenever an examination is made, all of the provisions of  
17 chapter 48.03 RCW not inconsistent with this chapter shall be  
18 applicable. In lieu of making an examination himself or herself, the  
19 commissioner may, in the case of a foreign self-funded multiple  
20 employer welfare arrangement, accept an examination report of the  
21 applicant by the regulatory official in its state of domicile. In the  
22 case of a domestic self-funded multiple employer welfare arrangement,  
23 the commissioner may accept an examination report of the applicant by  
24 the regulatory official of a state that has already licensed the  
25 arrangement.

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

28 The definitions in this section apply throughout this chapter  
29 unless the context clearly requires otherwise.

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

33 (2) "Commissioner" means the Washington state insurance  
34 commissioner.

35 (3)(a) "Control" or "controlled by" or "under common control  
36 with" means the possession, direct or indirect, of the power to  
37 direct or cause the direction of the management and policies of a  
38 person, whether through the ownership of voting securities, by  
39 contract other than a commercial contract for goods or nonmanagement

1 services, or otherwise, unless the power is the result of an official  
2 position with or corporate office held by the person.

3 (b) Control exists when any person, directly or indirectly, owns,  
4 controls, holds with the power to vote, or holds proxies representing  
5 ten percent or more of the voting securities of any other person. A  
6 presumption of control may be rebutted by a showing made in the  
7 manner provided by RCW 48.31B.005(~~(+2)~~) (3) and 48.31B.025(11) that  
8 control does not exist in fact. The commissioner may determine, after  
9 furnishing all persons in interest notice and opportunity to be heard  
10 and making specific findings of fact to support the determination,  
11 that control exists in fact, notwithstanding the absence of a  
12 presumption to that effect.

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

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

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

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

22 (iii) A medicare prescription drug plan as defined in this  
23 chapter; or

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

26 (5)(a) "Discount plan organization" means a person that, in  
27 exchange for fees, dues, charges, or other consideration, provides or  
28 purports to provide access to discounts to its members on charges by  
29 providers for health care services. "Discount plan organization" also  
30 means a person or organization that contracts with providers,  
31 provider networks, or other discount plan organizations to offer  
32 discounts on health care services to its members. This term also  
33 includes all persons that determine the charge to or other  
34 consideration paid by members.

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

36 (i) Pharmacy benefit managers;

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



1 (iii) Marketers who market the discount plans of discount plan  
2 organizations which are licensed under this chapter as long as all  
3 written communications of the marketer in connection with a discount  
4 plan clearly identify the licensed discount plan organization as the  
5 responsible entity; or  
6 (iv) Health carriers, if the discount on health care services is  
7 offered by a health carrier authorized under chapter 48.20, 48.21,  
8 48.44, or 48.46 RCW.  
9 (6) "Health care facility" or "facility" has the same meaning as  
10 in RCW 48.43.005(~~((15))~~) (22).  
11 (7) "Health care provider" or "provider" has the same meaning as  
12 in RCW 48.43.005(~~((16))~~) (23).  
13 (8) "Health care provider network," "provider network," or  
14 "network" means any network of health care providers, including any  
15 person or entity that negotiates directly or indirectly with a  
16 discount plan organization on behalf of more than one provider to  
17 provide health care services to members.  
18 (9) "Health care services" has the same meaning as in RCW  
19 48.43.005(~~((17))~~) (24).  
20 (10) "Health carrier" or "carrier" has the same meaning as in RCW  
21 48.43.005(~~((18))~~) (25).  
22 (11) "Marketer" means a person or entity that markets, promotes,  
23 sells, or distributes a discount plan, including a contracted  
24 marketing organization and a private label entity that places its  
25 name on and markets or distributes a discount plan pursuant to a  
26 marketing agreement with a discount plan organization.  
27 (12) "Medicare prescription drug plan" means a plan that provides  
28 a medicare part D prescription drug benefit in accordance with the  
29 requirements of the federal medicare prescription drug improvement  
30 and modernization act of 2003.  
31 (13) "Member" means any individual who pays fees, dues, charges,  
32 or other consideration for the right to receive the benefits of a  
33 discount plan, but does not include any individual who enrolls in a  
34 patient access program.  
35 (14) "Patient access program" means a voluntary program sponsored  
36 by a pharmaceutical manufacturer, or a consortium of pharmaceutical  
37 manufacturers, that provides free or discounted health care products  
38 for no additional consideration directly to low-income or uninsured  
39 individuals either through a discount card or direct shipment.

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

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

7 (b) For purposes of this subsection, a "covered entity" means an  
8 insurer, a health care service contractor, a health maintenance  
9 organization, or a multiple employer welfare arrangement licensed,  
10 certified, or registered under the provisions of this title. "Covered  
11 entity" also means a health program administered by the state as a  
12 provider of health coverage, a single employer that provides health  
13 coverage to its employees, or a labor union that provides health  
14 coverage to its members as part of a collective bargaining agreement.

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

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

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

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

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

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

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

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

37 (2) RCW 48.31C.020 (Acquisition of a foreign health carrier—  
38 Preacquisition notification—Review) and 2001 c 179 s 2;

1 (3) RCW 48.31C.030 (Acquisition of a domestic health carrier—  
2 Filing—Review—Jurisdiction of courts) and 2001 c 179 s 3;  
3 (4) RCW 48.31C.040 (Registration with commissioner—Information  
4 required—Rule making—Disclaimer of affiliation—Failure to file) and  
5 2001 c 179 s 4;  
6 (5) RCW 48.31C.050 (Health carrier subject to registration—  
7 Standards for transactions within a holding company system—Notice to  
8 commissioner—Review) and 2001 c 179 s 5;  
9 (6) RCW 48.31C.060 (Extraordinary dividends or distributions—  
10 Restrictions—Definition of distribution) and 2001 c 179 s 6;  
11 (7) RCW 48.31C.070 (Examination of health carriers—Commissioner  
12 may order production of information—Failure to comply—Costs) and  
13 2001 c 179 s 7;  
14 (8) RCW 48.31C.080 (Violations of chapter—Commissioner may seek  
15 superior court order) and 2001 c 179 s 8;  
16 (9) RCW 48.31C.090 (Violations of chapter—Penalties—Civil  
17 forfeitures—Orders—Referral to prosecuting attorney—Imprisonment)  
18 and 2001 c 179 s 9;  
19 (10) RCW 48.31C.100 (Violations of chapter—Impairment of  
20 financial condition) and 2001 c 179 s 10;  
21 (11) RCW 48.31C.110 (Order for liquidation or rehabilitation—  
22 Recovery of distributions or payments—Liability—Maximum amount  
23 recoverable) and 2001 c 179 s 11;  
24 (12) RCW 48.31C.120 (Violations of chapter—Contrary to interests  
25 of subscribers or the public) and 2001 c 179 s 12;  
26 (13) RCW 48.31C.130 (Confidential proprietary and trade secret  
27 information—Exempt from public disclosure—Exceptions) and 2001 c 179  
28 s 13;  
29 (14) RCW 48.31C.140 (Person aggrieved by actions of commissioner)  
30 and 2001 c 179 s 15;  
31 (15) RCW 48.31C.150 (Rule making) and 2001 c 179 s 16;  
32 (16) RCW 48.31C.160 (Dual holding company system membership) and  
33 2001 c 179 s 17;  
34 (17) RCW 48.31C.900 (Severability—2001 c 179) and 2001 c 179 s  
35 18; and  
36 (18) RCW 48.31C.901 (Effective date—2001 c 179) and 2001 c 179 s  
37 19.

1        NEW SECTION.    **Sec. 22.**    If any provision of this act or its  
2 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. 23.**    Except for section 14 of this act, which  
6 takes effect July 1, 2017, this act takes effect January 1, 2016.

7        NEW SECTION.    **Sec. 24.**    Section 13 of this act expires July 1,  
8 2017.

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