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**SENATE BILL 5806**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senators Kuderer and Hunt

Prefiled 12/06/23.

1 AN ACT Relating to the confidentiality of insurance company data;  
2 and amending RCW 48.02.065.

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

4 **Sec. 1.** RCW 48.02.065 and 2015 c 122 s 15 are each amended to  
5 read as follows:

6 (1) Documents, materials, or other information as described in  
7 (~~either subsection (5) or (6), or both,~~) subsections (5), (6), (7),  
8 and (8) of this section are confidential by law and privileged, are  
9 not subject to public disclosure under chapter 42.56 RCW, and are not  
10 subject to subpoena directed to the commissioner or any person who  
11 received documents, materials, or other information while acting  
12 under the authority of the commissioner. The commissioner is  
13 authorized to use such documents, materials, or other information in  
14 the furtherance of any regulatory or legal action brought as a part  
15 of the commissioner's official duties. The confidentiality and  
16 privilege created by this section and RCW 42.56.400(8) applies only  
17 to the commissioner, any person acting under the authority of the  
18 commissioner, the national association of insurance commissioners and  
19 its affiliates and subsidiaries, regulatory and law enforcement  
20 officials of other states and nations, the federal government, and  
21 international authorities.

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

7 (3) The commissioner:

8 (a) May share documents, materials, or other information,  
9 including the confidential and privileged documents, materials, or  
10 information subject to subsection (1) of this section, with (i) the  
11 national association of insurance commissioners and its affiliates  
12 and subsidiaries, (~~and~~) (ii) regulatory and law enforcement  
13 officials of other states and nations, the federal government, and  
14 international authorities, and (iii) agencies of this state, if the  
15 recipient agrees to maintain the confidentiality and privileged  
16 status of the document, material, or other information;

17 (b) May receive documents, materials, or information, including  
18 otherwise either confidential or privileged, or both, documents,  
19 materials, or information, from (i) the national association of  
20 insurance commissioners and its affiliates and subsidiaries, and (ii)  
21 regulatory and law enforcement officials of other states and nations,  
22 the federal government, and international authorities and shall  
23 maintain as confidential and privileged any document, material, or  
24 information received that is either confidential or privileged, or  
25 both, under the laws of the jurisdiction that is the source of the  
26 document, material, or information; and

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

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

34 (5) Documents, materials, or information, which is either  
35 confidential or privileged, or both, which has been provided to the  
36 commissioner by (a) the national association of insurance  
37 commissioners and its affiliates and subsidiaries, (b) regulatory or  
38 law enforcement officials of other states and nations, the federal  
39 government, or international authorities, or (c) agencies of this  
40 state, is confidential and privileged only if the documents,

1 materials, or information is protected from disclosure by the  
2 applicable laws of the jurisdiction that is the source of the  
3 document, material, or information.

4 (6) Working papers, documents, materials, or information produced  
5 by, obtained by, or disclosed to the commissioner or any other person  
6 in the course of a financial or market conduct examination, or in the  
7 course of financial analysis or market conduct desk audit, are not  
8 required to be disclosed by the commissioner unless cited by the  
9 commissioner in connection with an agency action as defined in RCW  
10 34.05.010(3). The commissioner shall notify a party that produced the  
11 documents, materials, or information five business days before  
12 disclosure in connection with an agency action. The notified party  
13 may seek injunctive relief in any Washington state superior court to  
14 prevent disclosure of any documents, materials, or information it  
15 believes is confidential or privileged. In civil actions between  
16 private parties or in criminal actions, disclosure to the  
17 commissioner under this section does not create any privilege or  
18 claim of confidentiality or waive any existing privilege or claim of  
19 confidentiality.

20 (7) Documents, materials, or information provided to the  
21 commissioner by the federal government related to emergency  
22 management, hazard mitigation, and the national flood insurance  
23 program are confidential by law and privileged, and are not subject  
24 to public disclosure under chapter 42.56 RCW.

25 (8) Data requested by the commissioner from property and casualty  
26 entities regulated by the commissioner for the purpose of  
27 understanding and studying insurance market conditions outside the  
28 context of market conduct action is confidential by law and  
29 privileged and is not subject to public disclosure under chapter  
30 42.56 RCW unless cited by the commissioner in connection with an  
31 agency action as defined in RCW 34.05.010. Nothing in this section  
32 prohibits the commissioner from preparing and publishing reports,  
33 analysis, or other documents using the data received from individual  
34 property and casualty companies so long as the data in the report is  
35 in aggregate form and does not permit the identification of  
36 information related to individual companies. Data in the aggregate  
37 form are deemed open records available for public inspection. Nothing  
38 in this section affects, limits, or amends the commissioner's  
39 authority under chapter 48.37 RCW.

1        (9)(a) After receipt of a public disclosure request, the  
2 commissioner shall disclose the documents, materials, or information  
3 under subsection (6) of this section that relate to a financial or  
4 market conduct examination undertaken as a result of a proposed  
5 change of control of a nonprofit or mutual health insurer governed in  
6 whole or in part by chapter 48.31B RCW.

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

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

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

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

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