SUBSTITUTE SENATE BILL 6048

State of Washington 66th Legislature 2020 Regular Session

By Senate Financial Institutions, Economic Development & Trade (originally sponsored by Senators Das, Lovelett, Nguyen, Saldaña, Kuderer, and Wilson, C.; by request of Insurance Commissioner)

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

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

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

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

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

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

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

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

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

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

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

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

1 multiple employer welfare arrangements, except it does not include 2 agencies, authorities, or instrumentalities of the United States, its 3 possessions and territories, the commonwealth of Puerto Rico, the 4 District of Columbia, or a state or political subdivision of a state. 5 ((-7)) (8) "Internationally active insurance group" means an

- 6 insurance holding company system that:
- 7 (a) Includes an insurer registered under RCW 48.31B.025; and

8 (b) Meets the following criteria:

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(i) Premiums written in at least three countries;

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

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

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

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

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

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

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

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

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

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

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

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

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

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;

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

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

(iv) Require the national association of insurance commissioners 33 and its affiliates and subsidiaries to consent to intervention by an 34 insurer in any judicial or administrative action in which the 35 national association of insurance commissioners and its affiliates 36 and subsidiaries may be required to disclose confidential information 37 about the insurer shared with the national association of insurance 38 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 <u>NEW SECTION.</u> Sec. 3. A new section is added to chapter 48.31B 17 RCW to read as follows:

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

(a) Does not have substantial insurance operations in the UnitedStates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Assess the enterprise risks within the internationally activeinsurance group to ensure that:

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

37 (ii) Reasonable and effective mitigation measures are in place; 38 (b) Request from any member of an internationally active 39 insurance group subject to the commissioner's supervision, 40 information necessary and appropriate to assess enterprise risk,

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

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(i) Governance, risk assessment, and management;

4 (ii) Capital adequacy; and

5 (iii) Material intercompany transactions;

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

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

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

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

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

39 (a) The commissioner's cooperation must be in compliance with the40 laws of this state; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (9) Documents, materials, or information obtained <u>or provided</u> by 17 the insurance commissioner under RCW 48.31B.015(2) (1) and (m), 18 48.31B.025, 48.31B.030, ((and)) 48.31B.035, <u>and section 3 of this</u> 19 <u>act</u>, all of which are confidential and privileged;

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

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

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

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

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

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

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

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

37 (13) Confidential and privileged documents obtained or produced38 by the insurance commissioner and identified in RCW 48.37.080;

39 (14) Documents, materials, or information obtained by the 40 insurance commissioner under RCW 48.37.140; 1 (15) Documents, materials, or information obtained by the 2 insurance commissioner under RCW 48.17.595;

3 (16) Documents, materials, or information obtained by the 4 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and 5 (7)(a)(ii);

6 (17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver 7 under RCW 48.31.025 and 48.99.017, which are records under the 8 jurisdiction and control of the receivership court. The commissioner 9 is not required to search for, log, produce, or otherwise comply with 10 the public records act for any records that the commissioner obtains 11 12 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court; 13

14 (18) Documents, materials, or information obtained by the 15 insurance commissioner under RCW 48.13.151;

16 (19) Data, information, and documents provided by a carrier 17 pursuant to section 1, chapter 172, Laws of 2010;

18 (20) Information in a filing of usage-based insurance about the 19 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

20 (21) Data, information, and documents((, other than those 21 described in RCW 48.02.210(2) as it existed prior to repeal by 22 section 2, chapter 7, Laws of 2017 3rd sp. sess.,)) that are 23 submitted to the office of the insurance commissioner by an entity 24 providing health care coverage pursuant to RCW 28A.400.275 ((as it 25 existed on January 1, 2017, and RCW 48.02.210 as it existed prior to 26 repeal by section 2, chapter 7, Laws of 2017 3rd sp. sess.));

(22) Data, information, and documents obtained by the insurancecommissioner under RCW 48.29.017;

29 (23) Information not subject to public inspection or public 30 disclosure under RCW 48.43.730(5);

31 (24) Documents, materials, or information obtained by the 32 insurance commissioner under chapter 48.05A RCW;

33 (25) Documents, materials, or information obtained by the 34 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 35 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, 36 materials, or information independently qualify for exemption from 37 disclosure as documents, materials, or information in possession of 38 the commissioner pursuant to a financial conduct examination and 39 exempt from disclosure under RCW 48.02.065;

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

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

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

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

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

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