

521E.8 Confidentiality — use of reports and information — prohibition on announcements — prohibition on use in ratemaking.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, or a risk-based capital plan, including the results or report of any examination or analysis of an insurer performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, with respect to a domestic insurer or foreign insurer, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer, and is not to be used as a means to rank insurers generally.

3. Except as otherwise required under this chapter or as required of a publicly held company by the United States securities and exchange commission or other regulatory agency, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of an insurer, or of a component derived in the calculation, by an insurer, agent, broker, or other person engaged in any manner in the business of insurance which would be misleading, is prohibited. However, if a materially false statement comparing an insurer's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the insurer's risk-based capital levels is published or disseminated in any manner and if the insurer is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the insurer may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

5. A violation of this section by an insurer, agent, broker, or other person engaged in any manner in the business of insurance constitutes an unfair trade practice under chapter 507B.

96 Acts, ch 1046, §16

Referred to in §521E.3