

522.8 Confidentiality.

1. Documents, materials, or other information, including an own risk and solvency assessment summary report, in the possession or control of the insurance division of the department of commerce, that are obtained by, created by, or disclosed to the commissioner or to any other person pursuant to [this chapter](#), are recognized in this state as being proprietary and containing trade secrets. All such documents, materials, or other information, including the summary report, shall be confidential and privileged, shall not be subject to [chapter 22](#), shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use such documents, materials, or other information, including the summary report, in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information, including the summary report, public without the prior written consent of the insurer that provided the documents, materials, or other information, including the summary report.

2. The commissioner or any person who received documents, materials, or other information related to own risk and solvency assessments, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to [this chapter](#), shall not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information, including summary reports, subject to [subsection 1](#).

3. In order to assist in the performance of the commissioner's regulatory duties, the commissioner may do any of the following:

a. Upon request, share documents, materials, or other own risk and solvency assessment-related information, including the confidential and privileged documents, materials, or information subject to [subsection 1](#), and including proprietary and trade secret documents, materials, or information, with other state, federal, or international financial regulatory agencies, including members of any supervisory college, with the national association of insurance commissioners, and with any third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other assessment-related information and verifies in writing the legal authority to maintain such confidentiality and privilege.

b. Receive documents, materials, or other own risk and solvency assessment-related information, including otherwise confidential and privileged documents, materials, or information, and proprietary and trade secret documents, materials, and information, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college, and from the national association of insurance commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or other information received are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

4. In order to assist in the performance of the commissioner's regulatory duties, the commissioner shall enter into a written agreement with the national association of insurance commissioners or with a third-party consultant that is consistent with [subsection 3](#), governing the sharing and use of information provided pursuant to [this chapter](#), and that does all of the following:

a. Specifies procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or with a third-party consultant pursuant to [this chapter](#), including procedures and protocols of the national association of insurance commissioners for sharing information with other state regulators from states in which an insurance group has domiciled insurers. The agreement shall require that the recipient of such information must agree in writing to maintain the confidentiality and privileged status of the own risk and solvency assessment-related documents, materials, or other information and verify in writing the legal authority to maintain confidentiality and privilege.

b. Specifies that ownership of information shared with the national association of

insurance commissioners or with a third-party consultant pursuant to [this chapter](#) remains with the commissioner and that use of the information by the national association of insurance commissioners or by a third-party consultant is subject to the direction of the commissioner.

c. Prohibits the national association of insurance commissioners or a third-party consultant from storing the information shared pursuant to [this chapter](#) in a permanent database after the underlying analysis is completed.

d. Requires that prompt notice be given to an insurer whose confidential information is in the possession of the national association of insurance commissioners or a third-party consultant pursuant to [this chapter](#), that the information is subject to a request or subpoena to the national association of insurance commissioners or the third-party consultant for disclosure or production.

e. Requires the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners or the third-party consultant may be required to disclose confidential information about the insurer that was shared with the association or consultant pursuant to [this chapter](#).

f. In the case of an agreement involving a third-party consultant, provides for the insurer's written consent to the agreement.

5. The sharing of documents, materials, or information by the commissioner pursuant to [this chapter](#) shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of [this chapter](#).

6. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other own risk and solvency assessment-related information shall occur as a result of the disclosure of such documents, materials, or information to the commissioner under [this section](#) or as a result of the sharing of those documents, materials, or information as authorized in [this chapter](#).

7. Documents, materials, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant pursuant to [this chapter](#) shall be confidential and privileged, shall not be subject to [chapter 22](#), shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

[2013 Acts, ch 40, §8, 11](#)

Section applies on and after January 1, 2015; [2013 Acts, ch 40, §11](#)