

521H.6 Confidentiality.

1. Documents, materials, or other information, including a corporate governance annual disclosure, in the possession or control of the insurance division of the department of commerce, that is obtained by, created by, or disclosed to the commissioner or to any other person pursuant to [this chapter](#), is recognized in this state as being proprietary and containing trade secrets. All such documents, materials, or other information, including the disclosure, shall be confidential and privileged, shall not be subject to [chapter 22](#), shall be considered confidential under [chapter 507](#), 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 disclosure, 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 disclosure, public without the prior written consent of the insurer or insurance group that provided the documents, materials, or other information, including the disclosure. Nothing in [this section](#) shall be construed to require written consent of the insurer or insurance group before the commissioner may share or receive confidential documents, materials, or other information related to governance of an insurer or insurance group pursuant to [subsection 3](#) to assist in the performance of the commissioner's regular duties.

2. The commissioner or any other person who received documents, materials, or other information related to corporate governance, through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information is 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 disclosures, 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 corporate governance annual disclosure-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 as defined in [section 521A.1](#), with the national association of insurance commissioners, or with any third-party consultants designated by the commissioner pursuant to [subsection 4](#), provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other corporate governance annual disclosure-related information and verifies in writing the legal authority to maintain such confidentiality and privilege.

b. Receive documents, materials, or other corporate governance annual disclosure-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 state, federal, or international regulatory agencies, including members of any supervisory college as defined in [section 521A.1](#), 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 is 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 under [this chapter](#) the commissioner may retain, at the insurer's or insurance group's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, as may be reasonably necessary to assist the commissioner in reviewing a disclosure and related information submitted under [this chapter](#) or ensuring compliance of an insurer or insurance group with the requirements of [this chapter](#).

a. Any persons retained under [this subsection](#) shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

b. As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that the third-party consultant is free of any conflict of interest and that the third-party consultant has internal procedures in place to monitor compliance if a conflict arises and to ensure compliance with the confidentiality standards and requirements of [this chapter](#).

5. A written agreement entered into by the commissioner with the national association of insurance commissioners or with a third-party consultant governing the sharing and use of information provided pursuant to [this chapter](#) shall expressly require the written consent of the insurer prior to making public information provided under [this chapter](#) and shall contain a provision that does each of the following:

a. Expressly provides that the national association of insurance commissioners and any third-party consultants retained are subject to the same confidentiality standards and requirements governing the sharing and use of information provided pursuant to [this chapter](#) as the commissioner.

b. Specifies procedures and protocols regarding the confidentiality and security of information related to a corporate governance annual disclosure that is shared with the national association of insurance commissioners or with a third-party consultant pursuant to [this chapter](#) and specifies procedures and protocols for sharing information by the national association of insurance commissioners only with other state insurance 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 documents, materials, or other information related to the corporate governance annual disclosure and verify in writing the legal authority to maintain confidentiality and privilege.

c. 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.

d. 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.

e. Requires the national association of insurance commissioners or a third-party consultant to give prompt notice to the commissioner and to an insurer or insurance group 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.

f. Requires the national association of insurance commissioners or a third-party consultant to consent to intervention by an insurer or insurance group 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 or insurance group that was shared with the association or consultant pursuant to [this chapter](#).

6. 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](#).

7. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other corporate governance annual disclosure-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 sharing those documents, materials, or information as authorized in [this chapter](#).

2015 Acts, ch 27, §6, 9

Referred to in §521H.8