

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1713 Documents, materials, or other information; confidentiality; sharing and use of information; written agreement with NAIC or third-party consultant; administration, execution, and enforcement of chapter by director; inadmissibility as evidence.

Sec. 1713.

(1) Documents, materials, or other information, including the ORSA summary report, in the possession or control of the director that are obtained by, created by, or disclosed to the director or any other person under this chapter are considered proprietary and to contain trade secrets. The documents, materials, or other information are confidential and privileged, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action. However, the director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains.

(2) The director or any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the director or with whom the documents, materials, or other information are shared under this act shall not testify in a private civil action concerning confidential documents, materials, or information described in subsection (1).

(3) The director may do all of the following:

(a) Except as otherwise provided in this subdivision, on request, share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information described in subsection (1), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of a supervisory college, with the NAIC and with any third-party consultants designated by the director. The director shall not share documents, materials, or other ORSA-related information described in this subdivision unless the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(b) Subject to this subdivision, receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of a supervisory college, and from the NAIC. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The director shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided under this chapter. The written agreement must do all of the following:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant under this chapter, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers.

(b) Contain a statement that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(c) Specify that the director owns the information shared with the NAIC or a third-party consultant under this chapter and that the NAIC's or third-party consultant's use of the information is subject to the direction of the director.

(d) Prohibit the NAIC or third-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed.

(e) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or third-party consultant under this chapter is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production.

(f) Require the NAIC or third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or third-party consultant under this chapter.

(g) For an agreement involving a third-party consultant, provide for the insurer's written consent.

(5) The sharing of information and documents by the director under this chapter is not a delegation of regulatory authority or rule-making, and the director is solely responsible for the administration, execution, and enforcement of this chapter.

(6) The disclosure or sharing of documents, proprietary and trade-secret materials, or other ORSA-related information to the director or other person under this chapter is not a waiver of an applicable privilege or claim of confidentiality.

(7) Documents, materials, or other information in the possession or control of the NAIC or third-party consultants under this chapter is confidential and privileged, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in a private civil action.

(8) Documents, materials, or other information in the possession of an insurer created by the insurer to comply with this chapter is confidential and privileged, is not subject to subpoena or to discovery, and is not admissible in evidence in a private civil action.

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