60D.22 CONFIDENTIALITY.

Subdivision 1. **Classification protection and use of information by commissioner.** Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 60D.21 and all information reported pursuant to sections 60D.17, except as provided in section 60D.17, subdivision 1, paragraph (e); 60D.18; 60D.19; and 60D.20, are classified as confidential or protected nonpublic or both, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action. However, the commissioner may use the documents, materials, or other information 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 public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected by this action notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of it, in which event the commissioner may publish all or any part in the manner the commissioner deems appropriate.

Subd. 2. **Testimonial privilege.** Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom these documents, materials, or other information are shared pursuant to sections 60D.15 to 60D.29 is permitted or required to testify in a private civil action concerning documents, materials, or information subject to subdivision 1 that are classified as confidential, protected nonpublic, or both.

Subd. 3. **Sharing of information.** In order to assist in the performance of the commissioner's duties, the commissioner:

(1) may share documents, materials, or other information, including the confidential, protected nonpublic, and privileged documents, materials, or information subject to this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 60D.215, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) notwithstanding clause (1), may only share confidential, protected nonpublic, and privileged documents, materials, or information reported pursuant to section 60D.19 with commissioners of states having statutes or regulations substantially similar to subdivision 1 and who have agreed in writing not to disclose this information;

(3) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential, protected nonpublic, or privileged any document, material, 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; and

(4) shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to sections 60D.15 to 60D.29 consistent with this clause that shall:

(i) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to sections 60D.15 to 60D.29, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;

(ii) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to sections 60D.15 to 60D.29 remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(iii) require prompt notice to be given to an insurer whose confidential or protected nonpublic information in the possession of the NAIC pursuant to sections 60D.15 to 60D.29 is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential or protected nonpublic information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to sections 60D.15 to 60D.29.

Subd. 4. **Responsibility for administration, execution, and enforcement.** The sharing of information by the commissioner pursuant to sections 60D.15 to 60D.29 does 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 sections 60D.15 to 60D.29.

Subd. 5. **Disclosure not deemed to be waiver of privilege or confidentiality.** No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision 3.

Subd. 6. **Classification protection and use by others.** Documents, materials, or other information in the possession or control of the NAIC pursuant to sections 60D.15 to 60D.29 are confidential, protected nonpublic, or privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action.

History: *1991 c 325 art 14 s 9; 2014 c 198 art 5 s 22*