

60A.67 CONFIDENTIALITY.

Subdivision 1. **Generally.** All risk-based capital reports, to the extent the information in them is not required to be set forth in a publicly available annual statement schedule, and risk-based capital plans, including the results or report of an examination or analysis of an insurer performed pursuant to sections 60A.60 to 60A.696, and any corrective order issued by the commissioner pursuant to an examination or analysis, with respect to a domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and shall be maintained by the commissioner as nonpublic data as defined in section 13.02, subdivision 9. This information 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 sections 60A.60 to 60A.696 or other provision of the insurance laws of this state.

Subd. 2. **Prohibition on announcements.** The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Except as otherwise required under sections 60A.60 to 60A.696, the making, publishing, dissemination, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of an insurer, or of any component derived in the calculation, by an insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if a materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in a written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement. This subdivision does not prohibit an insurance company or its holding company from disclosing information about its risk-based capital levels in the notes to its financial statements if required by pronouncements of the American Institute of Certified Public Accountants or the Financial Accounting Standards Board, or making this disclosure as required by other governmental regulatory agencies.

Subd. 3. **Prohibition on use in ratemaking.** The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. This information shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in a rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for a line of insurance that an insurer or an affiliate is authorized to write.

History: 1995 c 253 s 9; 1996 c 446 art 2 s 6