

60D.22 CONFIDENTIALITY.

Subdivision 1. **Classification protection and use of information by commissioner.** (a) 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; 60D.20; and 60D.217, 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 is served by the publication of it, in which event the commissioner may publish all or any part in the manner the commissioner deems appropriate.

(b) For purposes of the information reported and provided to the department pursuant to section 60D.19, subdivision 11b, the commissioner must maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States groupwide supervisor.

(c) For purposes of the information reported and provided to the department pursuant to section 60D.19, subdivision 11c, the commissioner must maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States groupwide supervisors.

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, including proprietary and trade secret documents and materials, with: (i) other state, federal, and international regulatory agencies; (ii) the NAIC; (iii) any third-party consultants designated by the commissioner; and (iv) 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, subdivision 11a, 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 the NAIC's 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 and a third-party consultant designated by the commissioner 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 or a third-party consultant designated by the commissioner pursuant to sections 60D.15 to 60D.29, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality;

(ii) specify that ownership of information shared with the NAIC or a third-party consultant pursuant to sections 60D.15 to 60D.29 remains with the commissioner and the NAIC's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner;

(iii) excluding documents, material, or information reported pursuant to section 60D.19, subdivision 11c, prohibit the NAIC or a third-party consultant designated by the commissioner from storing the information shared pursuant to sections 60D.15 to 60D.29 in a permanent database after the underlying analysis is completed;

(iv) require prompt notice to be given to an insurer whose confidential or protected nonpublic information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to sections 60D.15 to 60D.29 is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production;

(v) require the NAIC or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant designated by the commissioner may be required to disclose confidential or protected nonpublic information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner pursuant to sections 60D.15 to 60D.29; and

(vi) for documents, material, or information reported pursuant to section 60D.19, subdivision 11c, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.

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 or a third-party consultant designated by the commissioner 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.

Subd. 7. **Certain disclosures or publication prohibited.** (a) The group capital calculation and resulting group capital ratio required under section 60D.19, subdivision 11b, and the liquidity stress test along with the liquidity stress test's results and supporting disclosures required under section 60D.19, subdivision 11c, are regulatory tools to assess group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally.

(b) Except as otherwise required under sections 60D.09 to 60D.29, making, publishing, disseminating, 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, television station, or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business is misleading and is prohibited.

(c) Notwithstanding paragraph (b), an insurer may publish an announcement in a written publication if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the statement's falsity or inappropriateness. The sole purpose of an announcement under this paragraph must be to rebut the materially false statement.

History: 1991 c 325 art 14 s 9; 2014 c 198 art 5 s 22; 1Sp2025 c 4 art 4 s 17-20