60D.57 CONFIDENTIALITY.

Subdivision 1. **Classification protection and use of information by commissioner.** Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under sections 60D.50 to 60D.58 are recognized by this state as being confidential and containing trade secrets. Those documents, materials, or other information 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 a 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.

Subd. 2. **Testimonial privilege.** Neither the commissioner nor any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to sections 60D.50 to 60D.58 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 regulatory duties, the commissioner:

(1) may, upon request, share documents, materials, or other ORSA-related information, including the confidential, protected nonpublic, and privileged documents, materials, or information subject to subdivision 1, including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of a supervisory college, as defined in section 60D.215, with the National Association of Insurance Commissioners and with third-party consultants designated by the commissioner, provided 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;

(2) may 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, as defined in section 60D.215, and from the National Association of Insurance Commissioners, and shall maintain as confidential, protected nonpublic, or privileged 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; and

(3) shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to sections 60D.50 to 60D.58, consistent with this subdivision that:

(i) specifies procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement must provide 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;

(ii) specifies that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58 remains with the commissioner and the National Association of Insurance Commissioner's or a third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to sections 60D.50 to 60D.58 in a permanent database after the underlying analysis is completed;

(iv) requires prompt notice to be given to an insurer whose confidential or protected nonpublic information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58 is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(v) requires the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential or protected nonpublic information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58; and

(vi) in the case of an agreement involving a third-party consultant, provides for the insurer's written consent.

Subd. 4. **Responsibility for administration, execution, and enforcement.** The sharing of information and documents by the commissioner pursuant to sections 60D.50 to 60D.58 does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of sections 60D.50 to 60D.58.

Subd. 5. **Disclosure not deemed to be waiver of privilege or confidentiality.** No waiver of an applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other ORSA-related information occurs as a result of disclosure of ORSA-related information or documents to the commissioner under this subdivision or as a result of sharing as authorized in sections 60D.50 to 60D.58.

Subd. 6. **Classification, protection, and use of information by others.** Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58 are confidential, protected nonpublic, and privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action.

History: *2014 c 198 art 6 s 8*