

§ 58-10-735. Confidentiality.

(a) Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the Commissioner that are obtained by, created by, or disclosed to the Commissioner or any other person under this Part, is recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to 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.

(b) 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 such documents, materials, or other information are shared pursuant to this Part shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) 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 and privileged documents, materials, or information subject to subsection (a) of this section and any proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies. For purposes of this subdivision, financial regulatory agencies shall include members of any supervisory college as defined in G.S. 58-19-37, the NAIC, and any third-party consultants designated by the Commissioner. Recipients of information under this subdivision must agree in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and verify in writing the recipient's legal authority to maintain confidentiality.
- (2) May receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information and proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in G.S. 58-19-37, and from the NAIC. The Commissioner shall maintain as confidential or privileged any documents, materials, or information received pursuant to this subdivision 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.
- (3) Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this Part, consistent with this subsection, that shall 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 pursuant to this Part, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement

shall 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.

- b. Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this Part remains with the Commissioner, and the NAIC's or a third-party consultant's use of the information is subject to the direction of the Commissioner.
- c. Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Part in a permanent database after the underlying analysis is completed.
- d. Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Part is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production.
- e. Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Part.
- f. In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(d) The sharing of information and documents by the Commissioner pursuant to this Part shall not constitute a delegation of regulatory authority or rule making, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this Part.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the Commissioner under this section or as a result of sharing as authorized in this Part.

(f) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to this Part shall be confidential by law and privileged, shall not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. (2017-136, s. 1.)