

§ 58-19-40. Confidential treatment.

(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 G.S. 58-19-35, and all information reported or provided to the Department pursuant to subdivisions (11a) and (11b) of G.S. 58-19-15(b), G.S. 58-19-25, G.S. 58-19-30 and G.S. 58-19-38 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 to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part of the information in such manner as may be deemed appropriate.

(b) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner or with whom such documents, materials, or other information are shared pursuant to this Article 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 duties imposed by this Article, the Commissioner:

- (1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of 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 G.S. 58-19-37, 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 subdivision (1) of this subsection, may only share confidential and privileged documents, material, or information reported pursuant to G.S. 58-19-25 with Commissioners of states having statutes or regulations substantially similar to subsection (a) of this section and who have agreed in writing not to disclose such 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 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.
- (4) Shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this Article consistent with this subsection that shall:

- a. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;
- b. Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Article remains with the Commissioner, and the NAIC's use of the information is subject to the direction of the Commissioner;
- c. Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this Article is subject to a request or subpoena to the NAIC for disclosure or production; and
- d. 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 information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to Article 19 of this Chapter.

(d) The sharing of information by the Commissioner pursuant to this Article 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 Article 19 of this Chapter.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials, or other information in the possession or control of the NAIC pursuant to a requirement of this Article shall be confidential by law and privileged, shall not be considered a public record under 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. (1989, c. 722, s. 1; 2015-146, s. 1.8; 2015-281, s. 13; 2019-57, s. 1(d).)