

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** 500.1355.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 29, 2023 *****

500.1355.amended Examination of insurer or affiliates; privilege and confidentiality of information; use of materials; written consent; disclosure; notice; publication in interest of public; sharing documents; written agreement; responsibility of director; group capital calculation.

Sec. 1355. (1) Except as otherwise provided in this section, documents, materials, and other information in the possession or control of the department that are obtained by or disclosed to the director or any other person in the course of an examination or investigation made under section 1351, and all information reported or provided to the department under sections 1312(2), 1324 to 1333, 1341 to 1344, and 1359, are proprietary and contain trade secrets, are confidential and privileged, are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil or administrative action.

(2) Except as otherwise provided in subsections (5) and (6), the director may use the documents, materials, or information described in subsection (1) in furtherance of a regulatory or legal action brought as part of the director's official duties.

(3) Except as otherwise provided in subsections (2), (4), and (5), the director shall not publicly disclose the documents, materials, or information described in subsection (1) without the prior written consent of the insurer to which it pertains.

(4) Except as otherwise provided in subsections (2) and (5), the director may, after giving the insurer and its affiliates that would be affected by the disclosure notice and opportunity to be heard, disclose all or part of any document, material, or information described in subsection (1) if the director determines that the interests of policyholders, shareholders, or the public will be served by the publication of the document, material, or information.

(5) The director shall not disclose any of the following information:

(a) All of the following information reported and provided to the department under section 1325b:

(i) The group capital calculation.

(ii) The group capital ratio produced within the group capital calculation.

(iii) Any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(b) All of the following information reported and provided to the department under section 1325c:

(i) The liquidity stress test results.

(ii) Any supporting disclosures to the liquidity stress test results.

(iii) Any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States group-wide supervisors.

(6) The director or a person who received documents, materials, or other information while acting under the authority of the director or with whom the documents, materials, or other information is shared under this chapter shall not testify in a private civil or administrative action concerning documents, materials, or information described in subsections (1) to (5).

(7) Except as otherwise provided in subsection (8), the director may share documents, materials, or other information, including documents, materials, and information that are confidential, privileged, proprietary, and constitute trade secrets under subsection (1), with any of the following entities if the entity agrees in writing to maintain the confidentiality and privileged status of the document, material, or information and has verified in writing the legal authority to maintain the confidentiality:

(a) A state, federal, or international regulatory agency.

(b) The NAIC.

(c) A third-party consultant designated by the director.

(d) A state, federal, or international law enforcement authority, including a member of a supervisory college under section 1357.

(8) The director may only share confidential and privileged documents, material, or information that are reported under section 1325a with commissioners of states having statutes or regulations substantially similar to subsections (1) to (5) and who have agreed in writing to not disclose the documents, materials, or information.

(9) The director may receive documents, materials, or information, including documents, materials, or information that are confidential, privileged, or proprietary or that constitute trade secrets under subsection

(1), 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.

(10) The disclosure of documents, materials, or other information to the director or another person under this section or the sharing of documents, materials, or other information under this section is not a waiver of an applicable privilege or claim of confidentiality.

(11) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant designated by the director under this chapter are confidential and privileged, are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible as evidence in a private civil or administrative action.

(12) The director shall enter into written agreements with the NAIC and any third-party consultant designated by the director governing sharing and use of information provided under this chapter. The written agreement must meet all of the following requirements:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant designated by the director under this chapter, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The procedures and protocols must require the recipient of the shared documents, materials, or information to agree in writing to maintain the confidentiality and privileged status of the documents, materials, and information and verify in writing the legal authority to maintain the confidentiality.

(b) Specify that the director owns the information shared with the NAIC or a third-party consultant designated by the director under this chapter and that the NAIC's or the third-party consultant's use of the information is subject to the direction of the director.

(c) Prohibit the NAIC or a third-party consultant designated by the director from storing information shared under this chapter in a permanent database after the underlying analysis is completed. This subdivision does not apply to documents, materials, or other information reported under 1325c.

(d) Require prompt notice to be given to an insurer whose confidential information in possession of the NAIC or a third-party consultant designated by the director under this chapter is subject to a request or subpoena to the NAIC or a third-party consultant designated by the director for disclosure or production.

(e) Require the NAIC or a third-party consultant designated by the director to consent to intervention by an insurer in a judicial or administrative action in which the NAIC or the third-party consultant designated by the director may be required to disclose confidential information about the insurer shared under this chapter with the NAIC or third-party consultant designated by the director.

(13) In addition to any requirement for an agreement set forth in subsection (12), if a third-party consultant designated by the director is a party to the agreement, with regard to documents, materials, or information reported under section 1325c, the agreement must provide for notification of the identity of the third-party consultant to the applicable insurer.

(14) The group capital calculation and resulting group capital ratio required under section 1325b and the NAIC liquidity stress test and its results and supporting disclosures required under section 1325c are regulatory tools for assessing group risk and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems.

(15) Except as otherwise provided under this chapter, a person shall not, directly or indirectly, make, publish, disseminate, circulate, or place before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio or television station, by 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 or group capital ratio under section 1325b, or the liquidity stress test results or supporting disclosures for the liquidity stress tests under section 1325c, of any insurer or any insurer group, or of any component derived in the calculation by 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, that would be misleading.

(16) 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, resulting group capital ratio under section 1325b or 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 under section 1325c is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of the statement or its inappropriateness, the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(17) The sharing of information by the director under this chapter is not a delegation of regulatory authority or rule-making, and the director is solely responsible for the administration, execution, and enforcement of this chapter.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 2015, Act 244, Imd. Eff. Dec. 22, 2015;—Am. 2022, Act 261, Eff. Mar. 29, 2023.

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