



Ohio Revised Code

Section 3901.36 Confidential and privileged treatment of documents and information - exceptions.

Effective: July 21, 2022

Legislation: Senate Bill 256

(A)(1) Documents, materials, or other information in the possession or control of the department of insurance that are obtained by or disclosed to the superintendent of insurance or any other person in the course of an examination or investigation made pursuant to section 3901.35 of the Revised Code and all information reported pursuant to section 3901.33 of the Revised Code are recognized by this state as being proprietary and to contain trade secrets and shall be given confidential and privileged treatment and shall not be subject to section 149.43 of the Revised Code, subpoena, or discovery, and shall not be admissible in evidence in any private civil action. The superintendent shall not make the documents, materials, or other information public unless one of the following applies:

(a) The superintendent uses the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the superintendent's official duties.

(b) The superintendent has obtained the prior written consent of the insurer pertaining to the disclosure of the documents, materials, or other information of the insurer.

(c) The superintendent, after giving the insurer and those affiliates that are the subject of the documents, materials, or other information notice and an opportunity to be heard in accordance with Chapter 119. of the Revised Code, determines that the interests of policyholders, shareholders, or the public will be served by the disclosure, in which case the superintendent may make disclosures as the superintendent considers appropriate.

(2) For purposes of the information reported and provided to the superintendent of insurance pursuant to the group capital calculation requirements prescribed in division (L) of section 3901.33 of the Revised Code, the superintendent shall 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 United States federal reserve board or any United States group-wide supervisor.



(3) For purposes of the information reported and provided to the superintendent of insurance pursuant to the liquidity stress test requirements prescribed in division (M) of section 3901.33 of the Revised Code, the superintendent shall 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 United States federal reserve board and non-United States group-wide supervisors.

(B) Neither the superintendent nor any person who receives documents, materials, or other information while acting under the authority of the superintendent or with whom such documents, materials, or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to division (A) of this section.

(C) In order to assist in the performance of the superintendent's duties under this section, the superintendent may do either of the following:

(1) Share documents, materials, or other information, including the confidential and privileged documents, materials, or other information subject to division (A) of this section, including proprietary and trade secret documents and materials, with other local, state, federal, and international regulatory and law enforcement agencies, with the national association of insurance commissioners, with third-party consultants designated by the superintendent, and with members of any supervisory college described in section 3901.351 of the Revised Code, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged documents, materials, or other information and has verified in writing the legal authority to do so. The superintendent may share confidential and privileged documents, materials, or other information reported pursuant to section 3901.33 of the Revised Code only with superintendents of states having statutes or regulations substantially similar to division (A) of this section and who have agreed in writing not to disclose such information.

(2) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information, from the national association of insurance commissioners and its affiliates and subsidiaries and from



regulatory and law enforcement officials of other foreign or domestic jurisdictions. The superintendent shall maintain as confidential or privileged any such 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.

(D) The superintendent shall enter into written agreements with the national association of insurance commissioners, and any third-party consultant designated by the superintendent, governing sharing and use of information provided pursuant to sections 3901.32 to 3901.37 of the Revised Code consistent with division (C) of this section. The written agreements shall do all of the following:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or a third-party consultant designated by the superintendent pursuant to sections 3901.32 to 3901.37 of the Revised Code, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal, or international regulators. The agreement shall 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 such confidentiality.

(2) Specify that ownership of information shared with the national association of insurance commissioners or a third-party consultant pursuant to sections 3901.32 to 3901.37 of the Revised Code remains with the superintendent and the national association of insurance commissioners' or a third-party consultant's, as designated by the superintendent, use of the information is subject to the direction of the superintendent;

(3)(a) Prohibit the national association of insurance commissioners or third-party consultant designated by the superintendent from storing the information shared pursuant to this section in a permanent database after the underlying analysis is completed;

(b) Division (D)(3)(a) of this section does not apply to documents, material, or information reported pursuant to the liquidity stress test requirements prescribed in division (M) of section 3901.33 of the Revised Code.

(4) Require prompt notice to be given to an insurer whose confidential information is in the



possession of the national association of insurance commissioners or a third-party consultant designated by the superintendent pursuant to this section is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant designated by the superintendent for disclosure or production;

(5) Require the national association of insurance commissioners or a third-party consultant designated by the superintendent 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 designated by the superintendent may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners or a third-party consultant pursuant to sections 3901.32 to 3901.37 of the Revised Code;

(6) For documents, material, or information reporting pursuant to the liquidity stress test requirements prescribed in division (M) of section 3901.33 of the Revised Code, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.

(E) The sharing of information by the superintendent pursuant to sections 3901.32 to 3901.37 of the Revised Code shall not constitute a delegation of regulatory or rule-making authority. The superintendent is solely responsible for the administration, execution, and enforcement of the provisions of sections 3901.32 to 3901.37 of the Revised Code.

(F) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information described in this section shall occur as a result of sharing or receiving documents and information as authorized in division (C) of this section.

(G) Documents, materials, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant designated by the superintendent pursuant to this section shall be given confidential and privileged treatment and shall not be subject to section 149.43 of the Revised Code, subpoena, or discovery, and shall not be admissible in evidence in any private civil action.

(H) The group capital calculation and resulting group capital ratio required under division (L) of



section 3901.33 of the Revised Code and the liquidity stress test along with its results and supporting disclosures required under division (M) of section 3901.33 of the Revised Code are regulatory tools for assessing 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.

Therefore, except as otherwise may be required under the provisions of sections 3901.31 to 3901.37 of the Revised Code, the 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 or 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 would be misleading and is therefore prohibited; provided, however, that 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 superintendent with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.