



## Ohio Revised Code Section 3901.378 Confidentiality.

Effective: January 1, 2015

Legislation: Senate Bill 140 - 130th General Assembly

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(A) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession or control of the department of insurance that are obtained by, created by, or disclosed to the superintendent of insurance, or any other person under sections 3901.371 to 3901.378 of the Revised Code, are recognized by this state as being proprietary and to contain trade secrets.

(B) The documents described in division (A) of this section shall be confidential by law and privileged, and shall not be admissible into evidence in any private civil action or subject to section 149.43 of the Revised Code, subpoena, or discovery.

(C)(1) Notwithstanding division (B) of this section, the superintendent may use the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the superintendent's official duties.

(2) The superintendent shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(D) Neither the superintendent nor any person who receives documents, materials, or other own risk and solvency assessment related information, through examination or otherwise, while acting under the authority of the superintendent or with whom such documents, materials, or other information are shared pursuant to sections 3901.371 to 3901.378 of the Revised Code 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.

(E)(1) In order to assist in the performance of the superintendent's regulatory duties, the superintendent may do either of the following:

(a) Upon request, share documents, materials, or other own risk and solvency assessment related



information, including confidential and privileged documents, materials, or information subject to division (A) of this section, and proprietary and trade secret documents, with other state, federal and international financial regulatory agencies, members of any supervisory college as described in section 3901.351 of the Revised Code, the national association of insurance commissioners, or any third-party consultant designated by the superintendent;

(b) Receive documents, materials, or other own risk and solvency assessment related information, including confidential and privileged documents, materials, or information subject to division (A) of this section, and proprietary and trade secret documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as described in section 3901.351 of the Revised Code, and from the national association of insurance commissioners.

(2) The recipient of any information pursuant to division (E)(1)(a) of this section shall agree in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and verify in writing their legal authority to maintain confidentiality. If the superintendent receives any information pursuant to division (E)(1)(b) of this section, the superintendent shall maintain as confidential or privileged any 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.

(3) The superintendent 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 3901.371 to 3901.378 of the Revised Code. The written agreement shall do the all of the following:

(a) Specify 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 3901.371 to 3901.378 of the Revised Code, 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;

(b) Provide that the recipient of information agrees in writing to maintain the confidentiality and privileged status of the own risk and solvency assessment related documents, materials, or other



information obtained pursuant to sections 3901.371 to 3901.378 of the Revised Code, and has verified in writing the legal authority to maintain confidentiality;

(c) Specify that ownership of information shared with the national association of insurance commissioners or a third-party consultant pursuant to sections 3901.371 to 3901.378 of the Revised Code remains with the superintendent and the national association of insurance commissioners' or a third-party consultant's use of the information is subject to the direction of the superintendent;

(d) Prohibit the national association of insurance commissioners or a third-party consultant from storing the information obtained pursuant to sections 3901.371 to 3901.378 of the Revised Code in a permanent database after the underlying analysis is completed;

(e) Require prompt notice to be given to an insurer whose confidential information in the possession of the national association of insurance commissioners or a third-party consultant pursuant to sections 3901.371 to 3901.378 of the Revised Code is subject to a request or subpoena for disclosure or production of the information;

(f) Require 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 information about the insurer that was obtained pursuant to sections 3901.371 to 3901.378 of the Revised Code;

(g) Require the national association of insurance commissioners or a third-party consultant to use documents, materials, or other information, including the own risk solvency assessment summary report, for the specific purposes as directed by the superintendent;

(h) Prohibit the national association of insurance commissioners or a third-party consultant from using, sharing, or disclosing any documents, materials, or other information, including the own risk and solvency assessment summary report, beyond the scope of the responsibilities outlined by the superintendent;

(i) Provide for the insurer's written consent in the case of an agreement involving a third-party



consultant.

(F) The sharing of information, materials, and documents by the superintendent pursuant to sections 3901.371 to 3901.378 of the Revised Code shall not constitute a delegation of regulatory or rule-making authority, and the superintendent is solely responsible for the administration, execution, and enforcement of sections 3901.371 to 3901.378 of the Revised Code.

(G) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other own risk and solvency assessment related information shall occur as a result of disclosure of such own risk and solvency assessment related information, materials, or documents to the superintendent as a result of sharing authorized in sections 3901.371 to 3901.378 of the Revised Code.

(H) 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 3901.371 to 3901.378 of the Revised Code shall be confidential by law and privileged, and shall not be subject to section 149.43 of the Revised Code, subpoena, discovery, or admissible in evidence in any private civil action.