



Ohio Revised Code Section 3903.7211 Confidential information.

Effective: January 1, 2021

Legislation: House Bill 339 - 133rd General Assembly

(A) As used in this section:

(1) "Confidential information" means all of the following:

(a) A memorandum in support of an opinion submitted under sections 3903.722 and 3903.726 of the Revised Code and any other documents, materials, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the superintendent or any other person in connection with such memorandum.

(b)(i) Except as provided in division (A)(1)(b)(ii) of this section, all documents, materials, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the superintendent or any other person in the course of an examination made under division (F) of section 3903.728 of the Revised Code.

(ii) If an examination report or other material prepared in connection with an examination made under section 3901.07 of the Revised Code is not held as private and confidential information under that section, an examination report or other material prepared in connection with an examination made under division (F) of section 3903.728 of the Revised Code shall not be considered confidential information to the same extent as if such examination report or other material had been prepared under section 3901.07 of the Revised Code.

(c) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under division (B)(2) of section 3903.729 of the Revised Code evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the superintendent or any other person in connection with such reports, documents, materials, and other information;



(d) Any principle-based valuation report developed under division (B)(3) of section 3903.729 of the Revised Code and any other documents, materials, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the superintendent or any other person in connection with such report;

(e) Any documents, materials, data, and other information submitted by a company under section 3903.7210 of the Revised Code, referred to collectively as "experience data," and any other documents, materials, data, and other information, including all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the superintendent, which when combined with any experience data is referred to as "experience materials," and any other documents, materials, data, and other information, including all working papers, and copies thereof, created, produced, or obtained by or disclosed to the superintendent or any other person in connection with such experience materials.

(2) "Regulatory agency," "law enforcement agency," and the "national association of insurance commissioners" includes their employees, agents, consultants, and contractors.

(B)(1) Except as provided in division (B)(2) of this section and as otherwise provided in this section, a company's confidential information is confidential by law and privileged, is not a public record under section 149.43 of the Revised Code, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. Except as otherwise provided in this section, neither the superintendent nor any person who received confidential information while acting under the superintendent's authority shall be permitted or required to testify in any private civil action concerning that confidential information.

(2) The superintendent is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the superintendent's official duties.

(C)(1) In order to assist in the performance of the superintendent's duties, the superintendent may share confidential information with all of the following:



- (a) Other state, federal, and international regulatory agencies;
 - (b) The national association of insurance commissioners and its affiliates and subsidiaries;
 - (c) The actuarial board for counseling and discipline, or its successor, in the case of confidential information specified in divisions (A)(1)(a) and (d) of this section only, upon a request stating that the confidential information is required for the purpose of professional disciplinary proceedings;
 - (d) State, federal, and international law enforcement officials.
- (2) The superintendent may share confidential information as specified in divisions (C)(1)(a) through (d) of this section only if the recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data, and other information in the same manner and to the same extent as required for the superintendent.
- (D) The superintendent may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the actuarial board for counseling and discipline or its successor. The superintendent shall maintain as confidential or privileged any document, material, data, or other 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, data, or other information.
- (E) The superintendent may enter into agreements governing sharing and use of information consistent with this section.
- (F) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in division (C) of this section.
- (G) A privilege established under the law of any state or jurisdiction that is substantially similar to



the privilege established under this section shall be available and enforced in any proceeding in, and in any court of, this state.

(H) Notwithstanding divisions (B) to (G) of this section, any confidential information specified in divisions (A)(1)(a) and (d) of this section are subject to all of the following:

(1) The confidential information may be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under sections 3903.722 and 3903.726 of the Revised Code or principle-based valuation report developed under division (B)(3) of section 3903.729 of the Revised Code by reason of an action required by sections 3903.72 to 3903.7211 of the Revised Code or by rules adopted pursuant to those sections.

(2) The confidential information may otherwise be released by the superintendent with the written consent of the company.

(3) Once any portion of a memorandum in support of an opinion submitted under section 3903.722 or 3903.726 of the Revised Code or a principle-based valuation report developed under division (B)(3) of section 3903.729 of the Revised Code is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of that memorandum or report shall no longer be confidential.