



Ohio Revised Code Section 3903.88 Confidential information.

Effective: June 18, 2002

Legislation: Senate Bill 138 - 124th General Assembly

(A) The superintendent of insurance shall keep all of the following confidential:

(1) An RBC report, to the extent that information contained in the report is not required to be included in an annual statement available to the public;

(2) An RBC plan;

(3) The results of, or a report on, an examination or analysis conducted pursuant to division (B)(2) of section 3903.84 of the Revised Code, and a corrective order issued pursuant to division (B)(3) of section 3903.84 of the Revised Code.

(B) The plans, reports, information, and orders described in division (A) of this section are confidential and privileged and not subject to subpoena.

(C) Notwithstanding divisions (A) and (B) of this section, the superintendent may do any of the following:

(1) Use the plans, reports, information, and orders that are the subject of this section in accordance with the insurance laws of this state;

(2) Share the plans, reports, information, and orders that are the subject of this section with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the superintendent pursuant to Chapter 3901. or 3903. of the Revised Code, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the national association of insurance commissioners and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged plan, report, information, or order and has authority to do so;



(3) Disclose plans, reports, information, and orders that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent or the state, resulting from the exercise of the superintendent's official duties.

(D) Notwithstanding divisions (A), (B), and (C) of this section, the superintendent may authorize the national association of insurance commissioners and its affiliates and subsidiaries by agreement to share confidential or privileged plans, reports, information, and orders received pursuant to division (C)(2) of this section with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, provided that the recipient agrees to maintain the confidential or privileged status of the confidential or privileged plan, report, information, or order and has authority to do so.

(E) Notwithstanding divisions (A), (B), and (C) of this section, the chief deputy rehabilitator, the chief deputy liquidator, and other deputy rehabilitators and liquidators may disclose plans, reports, information, and orders that are the subject of this section in the furtherance of any regulatory or legal action brought by or on behalf of the superintendent, the rehabilitator, the liquidator, or the state resulting from the exercise of the superintendent's official duties in any capacity.

(F) Nothing in this section shall prohibit the superintendent from receiving plans, reports, information, and orders in accordance with section 3901.045 of the Revised Code.

(G) The superintendent may enter into agreements governing the sharing and use of plans, reports, information, and orders consistent with the requirements of this section.

(H)(1) No waiver of any applicable privilege or claim of confidentiality in the plans, reports, information, and orders that are the subject of this section shall occur as a result of sharing or receiving plans, reports, information, and orders as authorized in divisions (C)(2), (D), and (F) of this section.

(2) The disclosure of a plan, report, information, or order in connection with a regulatory or legal action pursuant to divisions (C)(3) and (E) of this section does not prohibit an insurer or any other person from taking steps to limit the dissemination of the plan, report, information, or order to



persons not involved in or the subject of the regulatory or legal action on the basis of any recognized privilege arising under any other section of the Revised Code or the common law.

(I) The comparison of an insurer's total adjusted capital to any of its RBC levels shall not be used to rank insurers.

(J) RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans, shall not be used by the superintendent for ratemaking, considered or introduced as evidence in any rate proceeding, or used by the superintendent to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

(K) Except as otherwise required under Title XXXIX of the Revised Code, it is an unfair and deceptive act or practice in the business of insurance for any person, as defined in division (A) of section 3901.19 of the Revised Code, to make, publish, disseminate, circulate, or place before the public, or to cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other manner, an advertisement, announcement, or statement, written or oral, that contains an assertion, representation, or statement, regarding the RBC levels of any insurer or any component derived in the calculation of the RBC levels.

(L) If any materially false statement is published comparing an insurer's total adjusted capital to its RBC levels, or any inappropriate comparison of any other amount to any of the insurers' RBC levels is published, and the insurer is able to demonstrate to the superintendent with substantial proof the falsity of the statement or the inappropriateness of the comparison, then the insurer may publish with the superintendent's approval an announcement in a written publication to rebut the materially false statement or inappropriate comparison.