

Article - Insurance

[Previous][Next]

§5-316. NOT IN EFFECT

**** CONTINGENCY – NOT IN EFFECT – CHAPTER 367 OF 2015 ****

(a) In this section, “confidential information” means:

(1) a memorandum in support of an opinion submitted under § 5-201.1 of this title and any documents, materials, and other information, including all working papers and copies of all working papers, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with the memorandum;

(2) any documents, materials, and other information, including all working papers and copies of all working papers, created, produced, or obtained by or disclosed to the Commissioner or any other person in the course of an examination made under § 5-313(f) of this subtitle;

(3) (i) 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 § 5-314(b)(1)(ii) of this subtitle evaluating the effectiveness of the company’s internal controls with respect to a principle-based valuation; and

(ii) any documents, materials, and other information, including all working papers and copies of all working papers, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with the reports, documents, materials, and information specified in item (i) of this item;

(4) a principle-based valuation report developed under § 5-314(b)(1)(iii) of this subtitle and any documents, materials, and other information, including all working papers and copies of all working papers, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with the principle-based valuation report; and

(5) (i) any documents, materials, data, and other information submitted to the Commissioner or any other person by a company under § 5-315 of this subtitle;

(ii) any documents, materials, data, and other information, including all working papers and copies of all working papers, created or produced in connection with the documents, materials, data, and information specified in item (i) of this item that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the Commissioner or any other person; and

(iii) any documents, materials, data, and other information, including all working papers and copies of all working papers, created, produced, or obtained by or disclosed to the Commissioner or any other person in connection with the documents,

materials, data, and other information specified in items (i) and (ii) of this item.

(b) Except as otherwise provided in this section, a company's confidential information:

(1) is confidential and privileged;

(2) is not subject to Title 4 of the General Provisions Article; and

(3) is not subject to subpoena or discovery or admissible in evidence in any private civil action.

(c) (1) The Commissioner, and any person who receives confidential information while acting under the authority of the Commissioner, may not testify or be required to testify in any private civil action concerning any confidential information.

(2) The Commissioner may use confidential information of a company in any regulatory or legal action brought against the company as a part of the Commissioner's official duties.

(d) If an examination report or material prepared in connection with an examination made under Title 2, Subtitle 2 of this article is not private and confidential information under Title 2, Subtitle 2 of this article, an examination report or other material prepared in connection with an examination made under § 5-313(f) of this subtitle is not "confidential information" to the same extent as if the examination report or other material had been prepared under Title 2, Subtitle 2 of this article.

(e) (1) Subject to paragraph (2) of this subsection, to assist in the performance of the Commissioner's duties, the Commissioner may share confidential information specified in:

(i) subsection (a)(1) through (5) of this section with:

1. any state, federal, or international regulatory agency and the employees, agents, consultants, and contractors of any state, federal, or international regulatory agency; and

2. NAIC and the employees, agents, consultants, contractors, affiliates, and subsidiaries of NAIC; and

(ii) subsection (a)(1) and (4) of this section with:

1. the Actuarial Board for Counseling and Discipline on a request from the Actuarial Board stating that the confidential information is required for the purpose of professional disciplinary proceedings; and

2. any state, federal, or international law enforcement official

and the employees, agents, consultants, and contractors of any state, federal, or international law enforcement official.

(2) Confidential information may be shared by the Commissioner under paragraph (1) of this subsection only if the recipient of the confidential information agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of any confidential information received in the same manner and to the same extent as required for the Commissioner.

(f) (1) The Commissioner may receive documents, materials, data, and other information, including otherwise confidential or privileged documents, materials, data, and information, from:

(i) NAIC and the employees, agents, consultants, contractors, affiliates, and subsidiaries of NAIC;

(ii) any state, federal, or international regulatory agency or law enforcement official and the employees, agents, consultants, and contractors of the regulatory agency or law enforcement official; and

(iii) the Actuarial Board for Counseling and Discipline.

(2) The Commissioner shall maintain as confidential and 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.

(g) The Commissioner may enter into agreements governing the sharing and use of confidential information consistent with this section.

(h) (1) Any applicable privilege or claim of confidentiality in confidential information is not waived as a result of:

(i) the disclosure of the confidential information to the Commissioner under this section; or

(ii) the sharing of the confidential information as authorized under subsection (e) of this section.

(2) A privilege established under the law of another state 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, the State.

(i) Any confidential information specified in subsection (a)(1) and (4) of this section:

(1) is subject to subpoena for defending in an action that:

(i) seeks damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under § 5–201.1 of this title or a principle–based valuation report developed under § 5–314(b)(1)(iii) of this subtitle; and

(ii) is based on an action required by this subtitle or regulations adopted under this subtitle; and

(2) may be released by the Commissioner with the written consent of the company.

(j) All parts of a memorandum in support of an opinion submitted under § 5–201.1 of this title or a principle–based valuation report developed under § 5–314(b)(1)(iii) of this subtitle are no longer confidential information if any part of the memorandum or report is:

(1) cited by the company in its marketing;

(2) publicly volunteered to or before a governmental unit other than a state insurance department; or

(3) released by the company to the news media.

[Previous][Next]