

**Effective 10/1/2015**

**Superseded 5/10/2016**

**31A-16-109 Confidentiality of information obtained by commissioner.**

- (1) Information, documents, and copies of these that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made under Section 31A-16-107.5, and all information reported under Section 31A-16-105, is confidential. It is not subject to subpoena and may not be made public by the commissioner or any other person, except it may be provided to the insurance departments of other states, without the prior written consent of the insurer to which it pertains. The confidentiality of this section does not apply if the commissioner, after giving the insurer and its affiliates who would be affected by the disclosure, proper notice and an opportunity to be heard, and determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information. In this situation, the commissioner may publish all or any part of the information in any manner the commissioner considers appropriate.
- (2) The commissioner and any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to this chapter shall keep confidential any confidential documents, materials, or information subject to Subsection (1).
- (3)
  - (a) To assist in the performance of the commissioner's duties, the commissioner:
    - (i) may share documents, materials, or other information, including the confidential documents, materials, or information subject to Subsection (1), with the following if the recipient agrees in writing to maintain the confidentiality status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality:
      - (A) other state, federal, and international regulatory agencies;
      - (B) the National Association of Insurance Commissioners and its affiliates and subsidiaries; and
      - (C) state, federal, and international law enforcement authorities, including members of a supervisory college described in Section 31A-16-108.5;
    - (ii) notwithstanding Subsection (1), may only share confidential documents, material, or information reported pursuant to Section 31A-16-105 with commissioners of states having statutes or regulations substantially similar to Subsection (1) and who have agreed in writing not to disclose the documents, material, or information;
    - (iii) may receive documents, materials, or information, including otherwise confidential documents, materials, or 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, and shall maintain as confidential any document, material, or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material, or information; and
    - (iv) shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this chapter consistent with this Subsection (3) that shall:
      - (A) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;

- (B) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter remains with the commissioner and the National Association of Insurance Commissioner's use of the information is subject to the direction of the commissioner;
  - (C) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and
  - (D) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this chapter.
- (4) The sharing of information by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.
  - (5) A waiver of any applicable claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (3).
  - (6) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this chapter are:
    - (a) confidential, not public records, and not open to public inspection; and
    - (b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.