

304.37-050 Confidential treatment of information obtained in course of examination -- Sharing and use of information.

- (1) (a) All documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the commissioner by any other person in the course of an examination, analysis, or investigation made pursuant to KRS 304.37-040 and all information reported pursuant to KRS 304.37-020, shall:
 1. Be confidential by law and privileged; and
 2. Not be subject to:
 - a. The Kentucky Open Records Act, KRS 61.872 to 61.884;
 - b. Subpoena;
 - c. Discovery; or
 - d. Admission in evidence in any private civil action.
 - (b) The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
 - (c) The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.
- (2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared, pursuant to this subtitle, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection (1) of this section.
 - (3) The commissioner:
 - (a) May share documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies, the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, including members of any supervisory college described in KRS 304.37-055, if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality;
 - (b) May only share confidential and privileged documents, materials, or other

information reported pursuant to KRS 304.37-020(13), notwithstanding paragraph (a) of this subsection, with commissioners of states having statutes or regulations substantially similar to subsection (1) of this section, and who have agreed in writing not to disclose such information;

- (c)
 - 1. May receive documents, materials, or other information, including confidential and privileged documents, materials, or other 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 jurisdiction; and
 - 2. Shall maintain as confidential or privileged any documents, materials, 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 documents, materials, or other information; and
- (d) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this subtitle, consistent with this subsection that:
 - 1. 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 subtitle, including procedures and protocols for sharing the National Association of Insurance Commissioners with other state, federal, or international regulators;
 - 2. Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries, pursuant to this subsection, remains with the commissioner, and the National Association of Insurance Commissioners' use of the information is subject to the direction of the commissioner;
 - 3. Require prompt notice be given to an insurer whose confidential information, in the possession of the National Association of Insurance Commissioners, pursuant to this subtitle, is subject to a request or subpoena to the National Association of Insurance Commissioners, pursuant to this subtitle, for disclosure or production; and
 - 4. 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.
- (4) The sharing of information by the commissioner shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for administration, execution, and enforcement of this subtitle.
- (5) A waiver of any applicable privilege or claim of confidentiality in the documents,

materials, or information shall not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

- (6) Documents, materials, or information in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries, pursuant to this subtitle, shall:
- (a) Be confidential by law and privileged; and
 - (b) Not be subject to:
 - 1. The Kentucky Open Records Act, KRS 61.872 to 61.884;
 - 2. Subpoena;
 - 3. Discovery; or
 - 4. Admission in evidence in any private civil action.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 57, sec. 2, effective June 24, 2015. -- Amended 2010 Ky. Acts ch. 24, sec. 1476, effective July 15, 2010. -- Created 1972 Ky. Acts ch. 52, sec. 5, effective June 16, 1972.