

### **304.6-132 Treatment of confidential information.**

(1) For purposes of this section:

(a) "Confidential information" means:

1. A memorandum in support of an opinion, submitted pursuant to KRS 304.6-171, and any other documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the memorandum;
2. All documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under KRS 304.6-143(6); except that if an examination report or other material prepared in connection with an examination made under KRS 304.2-250 is not held as private and confidential, an examination report or other material prepared in connection with an examination under KRS 304.6-143(6) shall not be confidential information to the same extent as if the examination report or other material had been prepared under KRS 304.2-250;
3. 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 KRS 304.6-151(2)(b) 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 but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with reports, documents, materials, and other information;
4. Any principle-based valuation report developed under KRS 304.6-151(2)(c) and any other documents, materials, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the report; and
5. Any documents, materials, data and other information submitted by a company under KRS 304.6-133, collectively referred to as experience data, and any other documents, materials, data, and other information, including but not limited to all working papers and copies created or produced in connection with the experience data, in each case that includes any potential company-identifying or personal identifiable information that is provided to or obtained by the commissioner, with any experience data referred to as the experience materials, and any other documents, materials, data, and other information, including but not limited to all working papers and copies created, produced, obtained by, or disclosed to the commissioner or any other person in connection with the experience materials; and

- (b) "Regulatory agency," "law enforcement agency," and "NAIC" include, but are not limited to their employees, agents, or consultants.
- (2) (a) Except as provided in this section, a company's confidential information:
  - 1. Shall be confidential by law and privileged; and
  - 2. Shall 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, except that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as part of the commissioner's official duties.
- (b) Neither the commissioner nor any person who received confidential information, while acting under the authority of the commissioner, shall be permitted or required to testify in any private civil action concerning any confidential information.
- (c) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information if the recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner with:
  - 1. Other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries; and
  - 2. In the case of confidential information, defined in subsection (1)(a)1. and 4. of this section, the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials.
- (d) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, and other information from the NAIC 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, and shall maintain as confidential or privileged any documents, materials, 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, or other information.
- (e) The commissioner may enter into agreements governing sharing and use of information consistent with this subsection.
- (f) No waiver of any applicable privilege or claim of confidentiality of confidential information shall occur as a result of disclosure to the commissioner under this section, or as a result of sharing the information as

authorized by paragraph (c) of this subsection.

- (g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding and in any court of this state.
- (3) (a) Notwithstanding subsection (2) of this section, any confidential information specified in subsection (1)(a)1. and 4. of this section:
- 1. 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 KRS 304.6-171, or the principle-based valuation report developed under KRS 304.6-151(2)(c), by reason of an action required by KRS 304.6-130 to 304.6-180, or by administrative regulation.
  - 2. May otherwise be released by the commissioner with the written consent of the company; and
- (b) All portions of a memorandum or report shall no longer be confidential if any portion of a memorandum in support of an opinion, submitted under KRS 304.6-171, or a principle-based valuation report, developed under KRS 304.6-151(2)(c), is cited by the company in its marketing, 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.

**Effective:** June 24, 2015

**History:** Created 2015 Ky. Acts ch. 57, sec. 8, effective June 24, 2015.