

# WEST VIRGINIA CODE: §33-27-7

## **§33-27-7. Confidential treatment.**

(a) Documents, materials or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to §33-27-6 of this code and all information reported or provided to the commissioner pursuant to §33-27-3(b) (12) or §33-27-3(b) (13) of this code; §33-27-4 of this code; §33-27-5 of this code; or §33-27-6b of this code is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29-b of this code, is not open to public inspection, is not subject to subpoena, is not subject to discovery or admissible in evidence in any criminal, private civil or administrative action and is not subject to production pursuant to court order: Provided, That the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may 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 he or she may publish all or any part thereof in any manner as he or she may consider appropriate.

(b) 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 article may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section, with other state, federal and international regulatory agencies, with 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 §33-27-6a of this code, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) Notwithstanding subdivision (1) of this subsection, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to §33-27-4(l) of this code, with commissioners of states having statutes or regulations substantially similar to subdivision (1) of this subsection and who have agreed in writing not to disclose such information;

(3) May receive documents, materials or information, including otherwise confidential and privileged 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 or privileged any document, material or 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 information; and

(4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article consistent with this subsection that:

(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 article, 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 article remains with the commissioner, and the National Association of Insurance Commissioners' 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 article 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 article.

(d) The sharing of information by the commissioner pursuant to this article does not constitute a delegation of regulatory authority, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this article is confidential by law and

privileged, is exempt from disclosure pursuant to chapter 29B of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.