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), §33-27-3(b)(13), §33-27-4, §33-27-5, or §33-27-6b of this code is confidential by law and privileged, is exempt from disclosure pursuant to chapter 29B 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.

(1) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(l)(2) of this code, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(2) For purposes of the information reported and provided to the commissioner pursuant to §33-27-4(l)(3) of this code, the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States group-wide supervisors.

(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

WV Legislature

other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, with any third-party consultants designated by the commissioner, 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)(1) of this code, with commissioners of states having statutes or regulations substantially similar to subsection (a) of this section 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 NAIC 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 NAIC and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this article consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement shall provide that 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 such confidentiality;

(B) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner pursuant to this article remains with the commissioner, and the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;

(C) Excluding documents, material, or information reported pursuant to §33-27-4(l)(3) of this code, prohibit the NAIC or a third-party consultant designated by the commissioner from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(D) Require prompt notice to be given to an insurer whose confidential information in the

WV Legislature

possession of the NAIC or a third-party consultant designated by the commissioner pursuant to this article is subject to a request or subpoena to the NAIC or third-party consultant for disclosure or production;

(E) Require the NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries or third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries or third-party consultant pursuant to this article; and

(F) For documents, material, or information reported pursuant to §33-27-4(l)(3) of this code, in the case of an agreement involving a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurers.

(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 NAIC and its affiliates and subsidiaries or a third-party consultant designated by the commissioner 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.

(g) The group capital calculation and resulting group capital ratio required under §33-27-4(l)(2) of this code and the liquidity stress test along with its results and supporting disclosures required under §33-27-4(l)(3) of this code are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this article, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any

WV Legislature

manner in the insurance business would be misleading and is therefore prohibited: *Provided*, That if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

WV Legislature