

**304.3-635 ORSA Summary Report and other information confidential, privileged, and exempt from Open Records Act and private civil action subpoena, discovery, and testimony -- Powers of commissioner.**

- (1) Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to KRS 304.3-600 to 304.3-635 and 304.99-055, are recognized as being proprietary and containing trade secrets. All documents, materials, or other information shall be confidential by law and privileged, and shall not be subject to disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall not be subject to subpoena, discovery, or admission as evidence in any private civil action. However, the commissioner is authorized to 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. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.
- (2) Neither the commissioner nor any person who received documents, materials, or other ORSA-related information through examination or otherwise, while acting under the authority of the commissioner or with whom such documents, materials, or other information are shared pursuant to KRS 304.3-600 to 304.3-635 and 304.99-055, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.
- (3) To assist in the performance of the commissioner's regulatory duties, the commissioner:
  - (a) May share documents, materials, or information, upon request, subject to subsection (1) of this section, including proprietary information or trade secrets, with other state, federal, and international financial regulatory agencies, including members of any supervisory college, as defined in KRS 304.37-010, the NAIC, and any third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality;
  - (b) May receive documents, materials, or other ORSA-related information, including confidential and privileged documents, materials, or information including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college, as defined in KRS 304.37-010, and the NAIC, and shall maintain as confidential or privileged any documents, materials, 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
  - (c) Shall enter into a written agreement with the NAIC or a third-party consultant

governing the sharing and use of information provided pursuant to this section that shall:

1. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this section, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality;
  2. Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this section shall remain with the commissioner, and that the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner;
  3. Prohibit the NAIC or third-party consultant from storing the shared information pursuant to this section in a permanent database after the analysis is completed;
  4. Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this section is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;
  5. Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer that was shared with the NAIC or a third-party consultant pursuant to this section; and
  6. If an agreement involves a third-party consultant, provide for the insurer's written consent.
- (4) The sharing of information and documents by the commissioner pursuant to this section shall not constitute a delegation of regulatory authority, and the commissioner shall be solely responsible for the administration, execution, and enforcement of the provisions of this section.
- (5) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other ORSA-related information shall occur as a result of disclosure of the ORSA-related information or documents to the commissioner under this section or as a result of sharing as authorized in this section.
- (6) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to this section shall be confidential by law and privileged, shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

**Effective:** January 1, 2015

**History:** Created 2014 Ky. Acts ch. 119, sec. 8, effective January 1, 2015.