

**304.37-050 Confidential treatment of information obtained by commissioner --  
Sharing and use of information.**

- (1) (a) Subject to paragraph (b) of this subsection and subsection (3) of this section, all documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the commissioner or any other person in the course of an examination, analysis, or investigation made under KRS 304.37-040 and all information reported or provided to the department under KRS 304.37-020, 304.37-030, and 304.37-160 shall:
    1. Be confidential by law and privileged;
    2. Not be subject to:
      - a. The Kentucky Open Records Act, KRS 61.872 to 61.884;
      - b. Subpoena; or
      - c. Discovery or admission into evidence in any private civil action; and
    3. Be recognized as being proprietary and containing trade secrets.
  - (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.
  - (d) For purposes of the information reported and provided to the department pursuant to KRS 304.37-020, 304.37-030, 304.37-040, and 304.37-160, the commissioner shall maintain the confidentiality of the:
    1. Group capital calculation and the 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 groupwide supervisor; and
    2. 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 groupwide supervisors.
- (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 the 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, including documents and materials containing trade secrets or proprietary information, with:

1. Other state, federal, and international regulatory agencies;
2. The NAIC;
3. Any third-party consultants designated by the commissioner; and
4. 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(14), 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 the information;

(c) 1. May receive documents, materials, or other information, including confidential and privileged documents, materials, or other information, including proprietary information or trade secrets, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions; 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 NAIC and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this subtitle and consistent with this subsection that:

1. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a designated third-party consultant pursuant to this subtitle, 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;
2. Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this subtitle remains with the commissioner, and the NAIC's or a designated third-party consultant's use of the

information is subject to the direction of the commissioner;

3. Except for documents, material, or information reported pursuant to KRS 304.37-020(16), prohibit the NAIC or designated third-party consultant from storing the information shared pursuant to this subtitle in a permanent database after the underlying analysis is completed;
  4. Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a designated third-party consultant pursuant to this subtitle is subject to a request or subpoena to the NAIC or a designated third-party consultant for disclosure or production;
  5. Require the NAIC or a designated third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a designated third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a designated third-party consultant pursuant to this subtitle; and
  6. For documents, material, or information reporting pursuant to KRS 304.37-020(16), in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.
- (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 NAIC or a third-party consultant designated by the commissioner 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; or
    3. Discovery or admission into evidence in any private civil action.
- (7) (a) The group capital calculation and resulting group capital ratio, and the liquidity stress test along with its results and supporting disclosures, required under KRS 304.37-020 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.
- (b) Except as permitted under paragraph (c) of this subsection or as may otherwise be required under the provisions of this subtitle, no person shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or

placed before the public:

1. In a newspaper, magazine, or other publication;
2. In the form of a notice, circular, pamphlet, letter, or poster;
3. Over any radio or television station or any electronic means of communication available to the public; or
4. 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 insurer group or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business.

(c) If any materially false statement with respect to the:

1. 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; or
2. 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.

**Effective:** July 14, 2022

**History:** Amended 2022 Ky. Acts ch. 133, sec. 9, effective July 14, 2022. -- Amended 2019 Ky. Acts ch. 156, sec. 4, effective June 27, 2019. -- 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.