



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### SB3202

Introduced 1/14/2022, by Sen. Napoleon Harris, III

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/131.22

215 ILCS 5/132.5

215 ILCS 5/547

from Ch. 73, par. 744.5

from Ch. 73, par. 1065.97

Amends the Illinois Insurance Code. In provisions concerning confidential treatment of documents, materials, or other information in the possession or control of the Department of Insurance and provisions concerning confidential treatment of information obtained in the course of an examination, provides that the Director of Insurance may only share confidential and privileged documents, material, or information with the Illinois Insurance Guaranty Fund regarding any member company if the Director determines that the member company may be subject to a future delinquency proceeding. Provides that the Director may disclose the information so long as the Fund agrees in writing to hold that information confidential and uses that information to prepare for the possible liquidation of the member company. Provides that access to the information disclosed by the Director to the Fund shall be limited to the Fund's staff and its counsel. Provides that the board of directors of the Fund may have access to the information disclosed by the Director to the Fund once the member company is subject to a delinquency proceeding subject to any terms and conditions established by the Director. In provisions concerning prevention of insolvencies, provides that the Director may disclose specified information to the Fund and the Fund may use that information to prepare for the possible liquidation of a member company subject to specified requirements and restrictions. Effective immediately.

LRB102 23348 BMS 32514 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 131.22, 132.5, and 547 as follows:

6 (215 ILCS 5/131.22)

7 (Text of Section before amendment by P.A. 102-578)

8 Sec. 131.22. Confidential treatment.

9 (a) Documents, materials, or other information in the  
10 possession or control of the Department that are obtained by  
11 or disclosed to the Director or any other person in the course  
12 of an examination or investigation made pursuant to this  
13 Article and all information reported or provided to the  
14 Department pursuant to paragraphs (12) and (13) of Section  
15 131.5 and Sections 131.13 through 131.21 shall be confidential  
16 by law and privileged, shall not be subject to the Illinois  
17 Freedom of Information Act, shall not be subject to subpoena,  
18 and shall not be subject to discovery or admissible in  
19 evidence in any private civil action. However, the Director is  
20 authorized to use the documents, materials, or other  
21 information in the furtherance of any regulatory or legal  
22 action brought as a part of the Director's official duties.  
23 The Director shall not otherwise make the documents,

1 materials, or other information public without the prior  
2 written consent of the company to which it pertains unless the  
3 Director, after giving the company and its affiliates who  
4 would be affected thereby prior written notice and an  
5 opportunity to be heard, determines that the interest of  
6 policyholders, shareholders, or the public shall be served by  
7 the publication thereof, in which event the Director may  
8 publish all or any part in such manner as may be deemed  
9 appropriate.

10 (b) Neither the Director nor any person who received  
11 documents, materials, or other information while acting under  
12 the authority of the Director or with whom such documents,  
13 materials, or other information are shared pursuant to this  
14 Article shall be permitted or required to testify in any  
15 private civil action concerning any confidential documents,  
16 materials, or information subject to subsection (a) of this  
17 Section.

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

20 (1) may share documents, materials, or other  
21 information, including the confidential and privileged  
22 documents, materials, or information subject to subsection  
23 (a) of this Section, with other state, federal, and  
24 international regulatory agencies, with the NAIC and its  
25 affiliates and subsidiaries, ~~and~~ with third-party  
26 consultants, and with state, federal, and international

1 law enforcement authorities and regulatory agencies,  
2 including members of any supervisory college allowed by  
3 this Article, provided that the recipient agrees in  
4 writing to maintain the confidentiality and privileged  
5 status of the document, material, or other information,  
6 and has verified in writing the legal authority to  
7 maintain confidentiality;

8 (1.5) notwithstanding paragraph (1) of this subsection  
9 (c), may only share confidential and privileged documents,  
10 material, or information reported pursuant to Section  
11 131.14b with commissioners of states having statutes or  
12 regulations substantially similar to subsection (a) of  
13 this Section and who have agreed in writing not to  
14 disclose such information; ~~and~~

15 (1.7) notwithstanding paragraph (1) of this subsection  
16 (c), may only share confidential and privileged documents,  
17 material, or information reported pursuant to Section  
18 131.14b with the Illinois Insurance Guaranty Fund  
19 regarding any member company defined in Section 534.5 if  
20 the Director determines that the member company may be  
21 subject to a future delinquency proceeding under Article  
22 XVIII; the Director may disclose the information described  
23 in this subsection so long as the Fund agrees in writing to  
24 hold that information confidential, in a manner consistent  
25 with this Code, and uses that information to prepare for  
26 the possible liquidation of the member company; access to

1       the information disclosed by the Director to the Fund  
2       shall be limited to the Fund's staff and its counsel; the  
3       board of directors of the Fund may have access to the  
4       information disclosed by the Director to the Fund once the  
5       member company is subject to a delinquency proceeding  
6       under Article XIII subject to any terms and conditions  
7       established by the Director; and

8               (2) may receive documents, materials, or information,  
9       including otherwise confidential and privileged documents,  
10       materials, or information from the NAIC and its affiliates  
11       and subsidiaries and from regulatory and law enforcement  
12       officials of other foreign or domestic jurisdictions, and  
13       shall maintain as confidential or privileged any document,  
14       material, or information received with notice or the  
15       understanding that it is confidential or privileged under  
16       the laws of the jurisdiction that is the source of the  
17       document, material, or information; any such documents,  
18       materials, or information, while in the Director's  
19       possession, shall not be subject to the Illinois Freedom  
20       of Information Act and shall not be subject to subpoena.

21       (c-5) Written agreements with the NAIC or third-party  
22       consultants governing sharing and use of information provided  
23       pursuant to this Article consistent with this subsection (c)  
24       shall:

25               (1) specify procedures and protocols regarding the  
26       confidentiality and security of information shared with

1 the NAIC and its affiliates and subsidiaries or  
2 third-party consultants pursuant to this Article,  
3 including procedures and protocols for sharing by the NAIC  
4 with other state, federal, or international regulators;

5 (2) specify that ownership of information shared with  
6 the NAIC and its affiliates and subsidiaries or  
7 third-party consultants pursuant to this Article remains  
8 with the Director and the NAIC's or third-party  
9 consultant's use of the information is subject to the  
10 direction of the Director;

11 (3) require prompt notice to be given to a company  
12 whose confidential information in the possession of the  
13 NAIC or third-party consultant pursuant to this Article is  
14 subject to a request or subpoena for disclosure or  
15 production; and

16 (4) require the NAIC and its affiliates and  
17 subsidiaries or third-party consultants to consent to  
18 intervention by a company in any judicial or  
19 administrative action in which the NAIC and its affiliates  
20 and subsidiaries or third-party consultants may be  
21 required to disclose confidential information about the  
22 company shared with the NAIC and its affiliates and  
23 subsidiaries or third-party consultants pursuant to this  
24 Article.

25 (d) The sharing of documents, materials, or information by  
26 the Director pursuant to this Article shall not constitute a

1 delegation of regulatory authority or rulemaking, and the  
2 Director is solely responsible for the administration,  
3 execution, and enforcement of the provisions of this Article.

4 (e) No waiver of any applicable privilege or claim of  
5 confidentiality in the documents, materials, or information  
6 shall occur as a result of disclosure to the Director under  
7 this Section or as a result of sharing as authorized in  
8 subsection (c) of this Section.

9 (f) Documents, materials, or other information in the  
10 possession or control of the NAIC or a third-party consultant  
11 pursuant to this Article shall be confidential by law and  
12 privileged, shall not be subject to the Illinois Freedom of  
13 Information Act, shall not be subject to subpoena, and shall  
14 not be subject to discovery or admissible in evidence in any  
15 private civil action.

16 (Source: P.A. 102-394, eff. 8-16-21.)

17 (Text of Section after amendment by P.A. 102-578)

18 Sec. 131.22. Confidential treatment.

19 (a) Documents, materials, or other information in the  
20 possession or control of the Department that are obtained by  
21 or disclosed to the Director or any other person in the course  
22 of an examination or investigation made pursuant to this  
23 Article and all information reported or provided to the  
24 Department pursuant to paragraphs (12) and (13) of Section  
25 131.5 and Sections 131.13 through 131.21 are recognized by

1 this State as being proprietary and to contain trade secrets,  
2 and shall be confidential by law and privileged, shall not be  
3 subject to the Illinois Freedom of Information Act, shall not  
4 be subject to subpoena, and shall not be subject to discovery  
5 or admissible in evidence in any private civil action.  
6 However, the Director is authorized to use the documents,  
7 materials, or other information in the furtherance of any  
8 regulatory or legal action brought as a part of the Director's  
9 official duties. The Director shall not otherwise make the  
10 documents, materials, or other information public without the  
11 prior written consent of the company to which it pertains  
12 unless the Director, after giving the company and its  
13 affiliates who would be affected thereby prior written notice  
14 and an opportunity to be heard, determines that the interest  
15 of policyholders, shareholders, or the public shall be served  
16 by the publication thereof, in which event the Director may  
17 publish all or any part in such manner as may be deemed  
18 appropriate.

19 (b) Neither the Director nor any person who received  
20 documents, materials, or other information while acting under  
21 the authority of the Director or with whom such documents,  
22 materials, or other information are shared pursuant to this  
23 Article shall be permitted or required to testify in any  
24 private civil action concerning any confidential documents,  
25 materials, or information subject to subsection (a) of this  
26 Section.



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

3 (1) may share documents, materials, or other  
4 information, including the confidential and privileged  
5 documents, materials, or information subject to subsection  
6 (a) of this Section, including proprietary and trade  
7 secret documents and materials, with other state, federal,  
8 and international regulatory agencies, with the NAIC and  
9 its affiliates and subsidiaries, ~~and~~ with third-party  
10 consultants, and with state, federal, and international  
11 law enforcement authorities and regulatory agencies,  
12 including members of any supervisory college allowed by  
13 this Article, provided that the recipient agrees in  
14 writing to maintain the confidentiality and privileged  
15 status of the document, material, or other information,  
16 and has verified in writing the legal authority to  
17 maintain confidentiality;

18 (1.5) notwithstanding paragraph (1) of this subsection  
19 (c), may only share confidential and privileged documents,  
20 material, or information reported pursuant to subsection  
21 (a) of Section 131.14b with commissioners of states having  
22 statutes or regulations substantially similar to  
23 subsection (a) of this Section and who have agreed in  
24 writing not to disclose such information; ~~and~~

25 (1.7) notwithstanding paragraph (1) of this subsection  
26 (c), may only share confidential and privileged documents,

1 material, or information reported pursuant to Section  
2 131.14b with the Illinois Insurance Guaranty Fund  
3 regarding any member company defined in Section 534.5 if  
4 the Director determines that the member company may be  
5 subject to a future delinquency proceeding under Article  
6 XIII; the Director may disclose the information described  
7 in this subsection so long as the Fund agrees in writing to  
8 hold that information confidential, in a manner consistent  
9 with this Code, and uses that information to prepare for  
10 the possible liquidation of the member company; access to  
11 the information disclosed by the Director to the Fund  
12 shall be limited to the Fund's staff and its counsel; the  
13 board of directors of the Fund may have access to the  
14 information disclosed by the Director to the Fund once the  
15 member company is subject to a delinquency proceeding  
16 under Article XIII subject to any terms and conditions  
17 established by the Director; and

18 (2) may receive documents, materials, or information,  
19 including otherwise confidential and privileged documents,  
20 materials, or information, including proprietary and trade  
21 secret information, from the NAIC and its affiliates and  
22 subsidiaries and from regulatory and law enforcement  
23 officials of other foreign or domestic jurisdictions, and  
24 shall maintain as confidential or privileged any document,  
25 material, or information received with notice or the  
26 understanding that it is confidential or privileged under

1 the laws of the jurisdiction that is the source of the  
2 document, material, or information; any such documents,  
3 materials, or information, while in the Director's  
4 possession, shall not be subject to the Illinois Freedom  
5 of Information Act and shall not be subject to subpoena.

6 ~~(blank).~~

7 (c-5) Written agreements with the NAIC or third-party  
8 consultants governing sharing and use of information provided  
9 pursuant to this Article consistent with subsection (c) shall:

10 (1) specify procedures and protocols regarding the  
11 confidentiality and security of information shared with  
12 the NAIC and its affiliates and subsidiaries or  
13 third-party consultants pursuant to this Article,  
14 including procedures and protocols for sharing by the NAIC  
15 with other state, federal, or international regulators;  
16 the agreement shall provide that the recipient agrees in  
17 writing to maintain the confidentiality and privileged  
18 status of the documents, materials, or other information  
19 and has verified in writing the legal authority to  
20 maintain such confidentiality;

21 (2) specify that ownership of information shared with  
22 the NAIC and its affiliates and subsidiaries or  
23 third-party consultants pursuant to this Article remains  
24 with the Director and the NAIC's or third-party  
25 consultant's use of the information is subject to the  
26 direction of the Director;

1           (3) require prompt notice to be given to a company  
2 whose confidential information in the possession of the  
3 NAIC or third-party consultant pursuant to this Article is  
4 subject to a request or subpoena for disclosure or  
5 production;

6           (4) require the NAIC and its affiliates and  
7 subsidiaries or third-party consultants to consent to  
8 intervention by a company in any judicial or  
9 administrative action in which the NAIC and its affiliates  
10 and subsidiaries or third-party consultants may be  
11 required to disclose confidential information about the  
12 company shared with the NAIC and its affiliates and  
13 subsidiaries or third-party consultants pursuant to this  
14 Article; and

15           (5) excluding documents, material, or information  
16 reported pursuant to subsection (c) of Section 131.14b,  
17 prohibit the NAIC or third-party consultant from storing  
18 the information shared pursuant to this Code in a  
19 permanent database after the underlying analysis is  
20 completed.

21           (d) The sharing of documents, materials, or information by  
22 the Director pursuant to this Article shall not constitute a  
23 delegation of regulatory authority or rulemaking, and the  
24 Director is solely responsible for the administration,  
25 execution, and enforcement of the provisions of this Article.

26           (e) No waiver of any applicable privilege or claim of

1 confidentiality in the documents, materials, or information  
2 shall occur as a result of disclosure to the Director under  
3 this Section or as a result of sharing as authorized in  
4 subsection (c) of this Section.

5 (f) Documents, materials, or other information in the  
6 possession or control of the NAIC or third-party consultant  
7 pursuant to this Article shall be confidential by law and  
8 privileged, shall not be subject to the Illinois Freedom of  
9 Information Act, shall not be subject to subpoena, and shall  
10 not be subject to discovery or admissible in evidence in any  
11 private civil action.

12 (Source: P.A. 102-394, eff. 8-16-21; 102-578, eff. 7-1-22 (See  
13 Section 5 of P.A. 102-672 for effective date of P.A. 102-578);  
14 revised 12-1-21.)

15 (215 ILCS 5/132.5) (from Ch. 73, par. 744.5)

16 Sec. 132.5. Examination reports.

17 (a) General description. All examination reports shall be  
18 comprised of only facts appearing upon the books, records, or  
19 other documents of the company, its agents, or other persons  
20 examined or as ascertained from the testimony of its officers,  
21 agents, or other persons examined concerning its affairs and  
22 the conclusions and recommendations as the examiners find  
23 reasonably warranted from those facts.

24 (b) Filing of examination report. No later than 60 days  
25 following completion of the examination, the examiner in

1 charge shall file with the Department a verified written  
2 report of examination under oath. Upon receipt of the verified  
3 report, the Department shall transmit the report to the  
4 company examined, together with a notice that affords the  
5 company examined a reasonable opportunity of not more than 30  
6 days to make a written submission or rebuttal with respect to  
7 any matters contained in the examination report.

8 (c) Adoption of the report on examination. Within 30 days  
9 of the end of the period allowed for the receipt of written  
10 submissions or rebuttals, the Director shall fully consider  
11 and review the report, together with any written submissions  
12 or rebuttals and any relevant portions of the examiners work  
13 papers and enter an order:

14 (1) Adopting the examination report as filed or with  
15 modification or corrections. If the examination report  
16 reveals that the company is operating in violation of any  
17 law, regulation, or prior order of the Director, the  
18 Director may order the company to take any action the  
19 Director considers necessary and appropriate to cure the  
20 violation.

21 (2) Rejecting the examination report with directions  
22 to the examiners to reopen the examination for purposes of  
23 obtaining additional data, documentation, or information  
24 and refileing under subsection (b).

25 (3) Calling for an investigatory hearing with no less  
26 than 20 days notice to the company for purposes of

1           obtaining additional documentation, data, information, and  
2           testimony.

3           (d) Order and procedures. All orders entered under  
4           paragraph (1) of subsection (c) shall be accompanied by  
5           findings and conclusions resulting from the Director's  
6           consideration and review of the examination report, relevant  
7           examiner work papers, and any written submissions or  
8           rebuttals. The order shall be considered a final  
9           administrative decision and may be appealed in accordance with  
10          the Administrative Review Law. The order shall be served upon  
11          the company by certified mail, together with a copy of the  
12          adopted examination report. Within 30 days of the issuance of  
13          the adopted report, the company shall file affidavits executed  
14          by each of its directors stating under oath that they have  
15          received a copy of the adopted report and related orders.

16          Any hearing conducted under paragraph (3) of subsection  
17          (c) by the Director or an authorized representative shall be  
18          conducted as a nonadversarial confidential investigatory  
19          proceeding as necessary for the resolution of any  
20          inconsistencies, discrepancies, or disputed issues apparent  
21          upon the face of the filed examination report or raised by or  
22          as a result of the Director's review of relevant work papers or  
23          by the written submission or rebuttal of the company. Within  
24          20 days of the conclusion of any hearing, the Director shall  
25          enter an order under paragraph (1) of subsection (c).

26          The Director shall not appoint an examiner as an

1 authorized representative to conduct the hearing. The hearing  
2 shall proceed expeditiously with discovery by the company  
3 limited to the examiner's work papers that tend to  
4 substantiate any assertions set forth in any written  
5 submission or rebuttal. The Director or his representative may  
6 issue subpoenas for the attendance of any witnesses or the  
7 production of any documents deemed relevant to the  
8 investigation, whether under the control of the Department,  
9 the company, or other persons. The documents produced shall be  
10 included in the record, and testimony taken by the Director or  
11 his representative shall be under oath and preserved for the  
12 record. Nothing contained in this Section shall require the  
13 Department to disclose any information or records that would  
14 indicate or show the existence or content of any investigation  
15 or activity of a criminal justice agency.

16 The hearing shall proceed with the Director or his  
17 representative posing questions to the persons subpoenaed.  
18 Thereafter the company and the Department may present  
19 testimony relevant to the investigation. Cross-examination  
20 shall be conducted only by the Director or his representative.  
21 The company and the Department shall be permitted to make  
22 closing statements and may be represented by counsel of their  
23 choice.

24 (e) Publication and use. Upon the adoption of the  
25 examination report under paragraph (1) of subsection (c), the  
26 Director shall continue to hold the content of the examination



1 report as private and confidential information for a period of  
2 35 days, except to the extent provided in subsection (b).  
3 Thereafter, the Director may open the report for public  
4 inspection so long as no court of competent jurisdiction has  
5 stayed its publication.

6 Nothing contained in this Code shall prevent or be  
7 construed as prohibiting the Director from disclosing the  
8 content of an examination report, preliminary examination  
9 report or results, or any matter relating thereto, to the  
10 insurance department of any other state or country or to law  
11 enforcement officials of this or any other state or agency of  
12 the federal government at any time, so long as the agency or  
13 office receiving the report or matters relating thereto agrees  
14 in writing to hold it confidential and in a manner consistent  
15 with this Code.

16 In the event the Director determines that regulatory  
17 action is appropriate as a result of any examination, he may  
18 initiate any proceedings or actions as provided by law.

19 (f) Confidentiality of ancillary information. All working  
20 papers, recorded information, documents, and copies thereof  
21 produced by, obtained by, or disclosed to the Director or any  
22 other person in the course of any examination must be given  
23 confidential treatment, are not subject to subpoena, and may  
24 not be made public by the Director or any other persons, except  
25 to the extent provided in subsection (e). Access may also be  
26 granted to the National Association of Insurance

1 Commissioners. Those parties must agree in writing before  
2 receiving the information to provide to it the same  
3 confidential treatment as required by this Section, unless the  
4 prior written consent of the company to which it pertains has  
5 been obtained.

6 This subsection (f) applies to market conduct examinations  
7 described in Section 132 of this Code.

8 (g) Disclosure. Nothing contained in this Code shall  
9 prevent or be construed as prohibiting the Director from  
10 disclosing the information described in subsections (e) and  
11 (f) to the Illinois Insurance Guaranty Fund regarding any  
12 member company defined in Section 534.5 if the Director  
13 determines that the member company may be subject to a future  
14 delinquency proceeding under Article XIII. The Director may  
15 disclose the information described in this subsection so long  
16 as the Fund agrees in writing to hold that information  
17 confidential, in a manner consistent with this Code, and uses  
18 that information to prepare for the possible liquidation of  
19 the member company. Access to the information disclosed by the  
20 Director to the Fund shall be limited to the Fund's staff and  
21 its counsel. The Board of Directors of the Fund may have access  
22 to the information disclosed by the Director to the Fund once  
23 the member company is subject to a delinquency proceeding  
24 under Article XIII subject to any terms and conditions  
25 established by the Director.

26 (Source: P.A. 100-475, eff. 1-1-18.)

1 (215 ILCS 5/547) (from Ch. 73, par. 1065.97)

2 Sec. 547. Prevention of insolvencies. To aid in the  
3 detection and prevention of company insolvencies:

4 (a) The board of directors may, upon majority vote, make  
5 recommendations to the Director on matters pertaining to  
6 regulation for solvency.

7 (b) The board of directors may prepare a report on the  
8 history and causes of any company insolvency in which the Fund  
9 was obligated to pay covered claims, based on the information  
10 available to the Fund, and submit such report to the Director.

11 (c) The Director may disclose to the Fund the information  
12 described in subsection (g) of Section 132.5 as well as the  
13 information described in subsection (c) of Section 131.22, and  
14 the Fund may use that information to prepare for the possible  
15 liquidation of a member company subject to the requirements  
16 and restrictions set forth in Section 132.5.

17 (Source: P.A. 85-576.)

18 Section 95. No acceleration or delay. Where this Act makes  
19 changes in a statute that is represented in this Act by text  
20 that is not yet or no longer in effect (for example, a Section  
21 represented by multiple versions), the use of that text does  
22 not accelerate or delay the taking effect of (i) the changes  
23 made by this Act or (ii) provisions derived from any other  
24 Public Act.

1           Section 99. Effective date. This Act takes effect upon  
2           becoming law.