

AN ACT concerning regulation.

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

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

(215 ILCS 5/131.22)

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

Sec. 131.22. Confidential treatment.

(a) Documents, materials, or other information in the possession or control of the Department that are obtained by or disclosed to the Director or any other person in the course of an examination or investigation made pursuant to this Article and all information reported or provided to the Department pursuant to paragraphs (12) and (13) of Section 131.5 and Sections 131.13 through 131.21 shall be confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Director 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 Director's official duties. The Director shall not otherwise make the documents,

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

(b) Neither the Director nor any person who received documents, materials, or other information while acting under the authority of the Director or with whom such documents, materials, or other information are shared pursuant to this Article shall 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 Director's duties, the Director:

(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 NAIC and its affiliates and subsidiaries, and with third-party consultants, and with state, federal, and international

law enforcement authorities and regulatory agencies, including members of any supervisory college allowed by this Article, provided that 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;

(1.5) notwithstanding paragraph (1) of this subsection (c), may only share confidential and privileged documents, material, or information reported pursuant to Section 131.14b 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; ~~and~~

(1.7) notwithstanding paragraph (1) of this subsection (c), may only share confidential and privileged documents, material, or information reported pursuant to Section 131.14b with the Illinois Insurance Guaranty Fund regarding any member company defined in Section 534.5 if the member company has an authorized control level event as defined in Section 35A-25; the Director may disclose the information described in this subsection so long as the Fund agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for the possible liquidation of the member company; access to the

information disclosed by the Director to the Fund shall be limited to the Fund's staff and its counsel; 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 under Article XIII subject to any terms and conditions established by the Director; and

(2) 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; any such documents, materials, or information, while in the Director's possession, shall not be subject to the Illinois Freedom of Information Act and shall not be subject to subpoena.

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

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

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

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

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

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

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

delegation of regulatory authority or rulemaking, and the Director 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 shall occur as a result of disclosure to the Director 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 or a third-party consultant pursuant to this Article shall be confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

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

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

Sec. 131.22. Confidential treatment.

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

this State as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Director 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 Director's official duties. The Director shall not otherwise make the documents, materials, or other information public without the prior written consent of the company to which it pertains unless the Director, after giving the company and its affiliates who would be affected thereby prior written notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public shall be served by the publication thereof, in which event the Director may publish all or any part in such manner as may be deemed appropriate.

(b) Neither the Director nor any person who received documents, materials, or other information while acting under the authority of the Director or with whom such documents, materials, or other information are shared pursuant to this Article shall 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 Director's duties, the Director:

(1) may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this Section, including proprietary and trade secret documents and materials, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, ~~and~~ with third-party consultants, and with state, federal, and international law enforcement authorities and regulatory agencies, including members of any supervisory college allowed by this Article, provided that 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;

(1.5) notwithstanding paragraph (1) of this subsection (c), may only share confidential and privileged documents, material, or information reported pursuant to subsection (a) of Section 131.14b 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; ~~and~~

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

material, or information reported pursuant to Section 131.14b with the Illinois Insurance Guaranty Fund regarding any member company defined in Section 534.5 if the member company has an authorized control level event as defined in Section 35A-25; the Director may disclose the information described in this subsection so long as the Fund agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for the possible liquidation of the member company; access to the information disclosed by the Director to the Fund shall be limited to the Fund's staff and its counsel; 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 under Article XIII subject to any terms and conditions established by the Director; and

(2) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret 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; any such documents, materials, or information, while in the Director's possession, shall not be subject to the Illinois Freedom of Information Act and shall not be subject to subpoena.

~~(b)blank).~~

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

(1) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries or third-party consultants 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;

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

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

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

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

(d) The sharing of documents, materials, or information by the Director pursuant to this Article shall not constitute a delegation of regulatory authority or rulemaking, and the Director 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 shall occur as a result of disclosure to the Director 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 or third-party consultant pursuant to this Article shall be confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(Source: P.A. 102-394, eff. 8-16-21; 102-578, eff. 12-31-22; revised 9-22-21.)

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

Sec. 132.5. Examination reports.

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

(b) Filing of examination report. No later than 60 days following completion of the examination, the examiner in charge shall file with the Department a verified written

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

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

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

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

(3) Calling for an investigatory hearing with no less than 20 days notice to the company for purposes of obtaining additional documentation, data, information, and

testimony.

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

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

The Director shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing

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

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

(e) Publication and use. Upon the adoption of the examination report under paragraph (1) of subsection (c), the Director shall continue to hold the content of the examination report as private and confidential information for a period of

35 days, except to the extent provided in subsection (b). Thereafter, the Director may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

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

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

(f) Confidentiality of ancillary information. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Director or any other person in the course of any examination must be given confidential treatment, are not subject to subpoena, and may not be made public by the Director or any other persons, except to the extent provided in subsection (e). Access may also be granted to the National Association of Insurance Commissioners. Those parties must agree in writing before

receiving the information to provide to it the same confidential treatment as required by this Section, unless the prior written consent of the company to which it pertains has been obtained.

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

(g) Disclosure. Nothing contained in this Code shall prevent or be construed as prohibiting the Director from disclosing the information described in subsections (e) and (f) to the Illinois Insurance Guaranty Fund regarding any member company defined in Section 534.5 if the member company has an authorized control level event as defined in Section 35A-25. The Director may disclose the information described in this subsection so long as the Fund agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for the possible liquidation of the member company. Access to the information disclosed by the Director to the Fund shall be limited to the Fund's staff and its counsel. 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 under Article XIII subject to any terms and conditions established by the Director.

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

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

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

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

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

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

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

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

Section 99. Effective date. This Act takes effect upon

Public Act 102-0929

HB4313 Enrolled

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becoming law.