

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Insurers Rehabilitation and Liquidation Act of 1993, the Holding Company System Act of 1993, the Risk-Based Capital Act of 1996, the Law on Examinations Act of 1993, the Insurance Industry Material Transactions Disclosure Act of 1996, and the Life Insurance Actuarial Opinion Reserves Act of 1933 to provide for the confidentiality of certain documents and information submitted to the Department of Insurance and Securities Regulation; to allow the sharing of confidential information among the members of the National Association of Insurance Commissioners, federal and international regulatory agencies, and state, federal, and international law enforcement authorities; and to authorize the promulgation of regulations and orders to conform with federal legislation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Insurer Confidentiality and Information Sharing Amendment Act of 2000".

Sec. 2. The Insurers Rehabilitation and Liquidation Act of 1993 is amended as follows:

(a) Section 10 is amended by adding the following new sentences at the end to read as follows:

"The Commissioner may share documents, materials, or other information in the possession or control of the Department of Insurance and Securities Regulation pertaining to an insurer that is the subject of a proceeding under this act with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality of the documents, material, or other information. No waiver of an applicable privilege or claim of confidentiality shall occur as a result of disclosure to the Commissioner or of sharing documents, materials, or other information under this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed."

(b) A new section 10a is added to read as follows:

"Sec. 10a. Duty to provide information to other insurance regulators and guaranty associations.

"The domiciliary receiver shall provide information to other state insurance regulators and guaranty associations, including reports and analyses of financial condition and the status of development of a plan of rehabilitation. The domiciliary receiver shall also permit a state insurance regulator or guaranty association to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information; provided, that (1) the regulator or guaranty association agrees, and has the legal authority, to maintain the confidentiality of the records, and (2) records will be used only for regulatory or guaranty association purposes. Access to financial records shall be at least equivalent to that to which a state insurance regulator was entitled before the commencement of a formal delinquency proceeding. Access to records may be limited to normal business hours. If the domiciliary receiver believes that certain information is sensitive and disclosure might cause a diminution in recovery, the receiver may apply for a protective order imposing additional restrictions on access. No waiver of an applicable privilege shall occur as a result of disclosure to the Commissioner or receiver or of sharing documents, materials, or other information under this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed."

Sec. 3. Section 9 of the Holding Company System Act of 1993 is amended to read as follows:

"(a) Documents, materials, or other information in the possession or control of the Department of Insurance and Securities Regulation that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made under section 8, and all information reported under sections 6 and 7, shall be confidential and privileged; shall not be subject to the Freedom of Information Act of 1976; shall not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action; provided, that:

"(1) 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.

"(2) The Commissioner may make the documents, materials, or other information public with the prior written consent of the insurer to which it pertains.

"(3) If the Commissioner, after giving the insurer and its affiliates who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication of the documents, materials, or other information, the Commissioner may publish all or any part of the documents, materials, or other information in the manner that the Commissioner considers appropriate.

"(b) The Commissioner or any person who received documents, materials, or other information while acting under the authority of the Commissioner shall not be permitted or required to testify in a private civil action concerning confidential documents, materials, or other information subject to subsection (a) of this section.

"(c) To assist in the performance of the Commissioner's duties, the Commissioner:

"(1) May share documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information;

"(2) May receive documents, materials, or other information, including confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners, including 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 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 document, material, or other information; or

"(3) May enter into agreements governing the sharing and use of information consistent with this section.

"(d) No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner under this section or of sharing as authorized in subsection (c) of this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed."

Sec. 4. Section 9 of the Risk-Based Capital Act of 1996 is amended as follows:

(a) Subsection (a) is amended by striking the phrases "which are filed with the Commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the Commissioner. This information shall not be made public or be subject to subpoena, other than by the Commissioner and then only for the purpose of enforcement actions taken by the Commissioner pursuant to this act or any other provision of the insurance laws of the District," and inserting the phrase and sentence "that are in the possession or control of the Department of Insurance and Securities Regulation shall be confidential and privileged; shall not be subject to the Freedom of Information Act of 1976; shall not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action; provided, that 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." in its place.

(b) New subsections (a-1) through (a-3) are added to read as follows:

"(a-1) The Commissioner or any person who received documents, materials, or other information while acting under the authority of the Commissioner shall not be permitted or required to testify in a private civil action concerning confidential documents, materials, or other information subject to subsection (a) of this section.

"(a-2) 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 other information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information;

"(2) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners, 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 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 document, material, or other information; or

"(3) May enter into agreements governing the sharing and use of information consistent with this section.

"(a-3) No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (a-2) of this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed."

Sec. 5. Section 5 of the Law on Examinations Act of 1993 is amended as follows:

(a) Subsection (f) is amended as follows:

(1) The first sentence is amended as follows:

(A) Strike the phrase "produced by," and insert the phrase "produced by, created by," in its place.

(B) Strike the phrase "must be given confidential treatment, are not subject to subpoena, and may not be made public by the Mayor or any other person, except to the extent provided in subsection (e) of this section." and insert the phrase "or in the course of analysis by the Commissioner of the financial condition or market conduct of a company shall be confidential and privileged; shall not be subject to the Freedom of Information Act of 1976; shall

not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action." in its place;

(2) Strike the second the third sentences and insert new sentences and paragraphs in their place to read as follows:

"The Commissioner may 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. Documents, materials, or other information, including all working papers, and copies, in the possession or control of the National Association of Insurance Commissioners, including its affiliates and subsidiaries, shall be confidential and privileged; shall not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action, if they are:

"(1) Created, produced, or obtained by, or disclosed to, the National Association of Insurance Commissioners, including its affiliates and subsidiaries, while the National Association of Insurance Commissioners, including its affiliates and subsidiaries, are (A) assisting in an examination made under this act or an examination made by another jurisdiction with a law that is substantially similar to this act, or (B) assisting the Commissioner or the chief insurance regulatory official of another jurisdiction in the analysis of the financial condition or market conduct of a company; or

"(2) Disclosed to the National Association of Insurance Commissioners, including its affiliates and subsidiaries, under subsection (f-2) of this section by the chief insurance regulatory official of another jurisdiction."

(b) New subsections (f-1) through (f-5) are added to read as follows:

"(f-1) The Commissioner or any person who received documents, material, or other information while acting under the authority of the Commissioner, including the National Association of Insurance Commissioners, including its affiliates and subsidiaries, shall not be permitted to testify in a private civil action concerning confidential documents, materials, or other information subject to subsection (f) of this section.

"(f-2) To assist in the performance of the Commissioner's duties, the Commissioner:

"(1) May share documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsection (f) of this section, with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, communication, or other information;

"(2) May receive documents, materials, communications, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners, including 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 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 document, material, or other information; or

"(3) May enter into agreements governing the sharing and use of information consistent with this subsection.

"(f-3) No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner under this section or of sharing as authorized in subsection (f-2) of this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed.

"(f-4) A privilege established under the law of a state or jurisdiction that is substantially similar to the privilege established under this section shall be available and enforced in any proceeding in, and in any court of, the District.

"(f-5) In this section, the terms "Department," "insurance department," "law enforcement agency," "regulatory agency," and "National Association of Insurance Commissioners" shall include their employees, agents, consultants, and contractors."

Sec. 6. The Insurance Industry Material Transactions Disclosure Act of 1996 is amended as follows:

(a) Section 2(d) is repealed.

(b) A new section 5 is added to read as follows:

" Sec. 5. Confidentiality.

"(a) All reports obtained by or disclosed to the Commissioner under this act in the possession or control of the Department of Insurance and Securities Regulation shall be confidential and privileged; shall not be subject to the Freedom of Information Act of 1976; shall not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action without the prior written consent of the insurer to which it pertains; provided, that 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.

"(b) If the Commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication of the information subject to subsection (a) of this section, the Commissioner may publish all or any part in the manner that the Commissioner considers appropriate.

"(c) The Commissioner or any person who received documents, materials, or other information while acting under the authority of the Commissioner shall not be permitted or required to testify in a private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

"(d) To assist in the performance of the Commissioner's duties, the Commissioner:

"(1) May share documents, materials, or other information, including the

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confidential and privileged documents, materials, or other information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information;

"(2) May receive documents, materials, or other information, including confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners, including 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 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 document, material, or other information; or

"(3) May enter into agreements governing the sharing and use of information consistent with this section.

"(e) No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner under this section or of sharing as authorized in subsection (d) of this section. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed."

Sec. 7. Section 2(a) of the Life Insurance Actuarial Opinion of Reserves Act of 1993 is amended by adding new paragraphs (8A) through (8G) to read as follows:

"(8A) Except as provided in paragraph (11) of this subsection, documents, materials, or other information in the possession or control of the Department of Insurance and Securities Regulation that are a memorandum in support of the opinion, and any other material provided by the company to the Commissioner in connection with the memorandum (individually and collectively, "memorandum"), shall be confidential and privileged; shall not be subject to the Freedom of Information Act of 1976; shall not be subject to subpoena; and shall not be subject to discovery or admissible in evidence in a private civil action; provided, that 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.

"(8B) The Commissioner or any person who received documents, materials, or other information while acting under the authority of the Commissioner shall not be permitted or required to testify in a private civil action concerning confidential documents, materials, or other information subject to paragraph (8A) of this subsection.

"(8C) To assist in the performance of the Commissioner's duties, the Commissioner:

"(A) May share documents, materials, or other information, including the confidential and privileged documents, materials, or other information subject to paragraph (8A)

of this subsection, with other state, federal and international regulatory agencies; with the National Association of Insurance Commissioners, including its affiliates and subsidiaries; and with state, federal and international law enforcement authorities; provided, that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information;

"(B) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners, including 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 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 document, material, or other information; or

"(C) May enter into agreements governing the sharing and use of information consistent with paragraphs (8A), (8B), and (8C) of this subsection.

"(8D) No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner under this section or of sharing as authorized in paragraph (8C) of this subsection. Nothing in this section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed.

"(8E) The memorandum may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an act required by this section or by regulations promulgated hereunder.

"(8E) The memorandum may be released by the Commissioner:

“(A) With the written consent of the company; or

“(B) To the American Academy of Actuaries, upon a request stating that the memorandum is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum.

"(8G) If a portion of the memorandum is cited by the company in its marketing, is cited before a governmental agency other than a state insurance department, or is released by the company to the news media, all portions of the memorandum shall be no longer confidential."

Sec. 8. Regulations.

The Commissioner may promulgate rules, regulations, and orders as are necessary or appropriate to conform to the Gramm-Leach-Bliley Act, approved November 12, 1999 (113 Stat. 1338; codified in scattered sections of the U.S. Code), or regulations promulgated thereunder.

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Sec. 9. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233 (c)(3)).

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia