

SUBSTITUTE FOR
HOUSE BILL NO. 6300

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 1355 (MCL 500.1355), as amended by 2015 PA 244.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1355. (1) Except as otherwise provided in this
2 ~~subsection, the information, documents, and copies of section,~~
3 documents, **materials, and other information in the possession or**
4 **control of the department that are** obtained by or disclosed to the
5 director or any other person in the course of an examination or
6 investigation made under ~~sections 1351 and 1357 and the information~~
7 ~~reported under sections 1324 to 1333 is confidential, is section~~
8 **1351, and all information reported or provided to the department**
9 **under sections 1312(2), 1324 to 1333, 1341 to 1344, and 1359, are**

1 **proprietary and contain trade secrets, are confidential and**
 2 **privileged, are** not subject to the freedom of information act, 1976
 3 PA 442, MCL 15.231 to 15.246, ~~is~~**are** not subject to subpoena, ~~is~~
 4 **and are** not subject to discovery or admissible in evidence in a
 5 private civil or administrative action. ~~, and shall not be made~~
 6 ~~public by the director or any other person,~~

7 (2) **Except as otherwise provided in subsections (5) and (6),**
 8 **the director may use the documents, materials, or information**
 9 **described in subsection (1) in furtherance of a regulatory or legal**
 10 **action brought as part of the director's official duties.**

11 (3) **Except as otherwise provided in subsections (2), (4), and**
 12 **(5), the director shall not publicly disclose the documents,**
 13 **materials, or information described in subsection (1) without the**
 14 **prior written consent of the insurer to which it pertains.** ~~The~~

15 (4) **Except as otherwise provided in subsections (2) and (5),**
 16 **the director may, after giving the insurer and its affiliates ~~who~~**
 17 **that** would be affected by the disclosure notice and opportunity to
 18 be heard, ~~disclose the~~**all or part of any document, material, or**
 19 **information described in subsection (1) if the director determines**
 20 **that the interests of policyholders, shareholders, or the public**
 21 **will be served by the publication of the document, material, or**
 22 **information.**

23 (5) **The director shall not disclose any of the following**
 24 **information:**

25 (a) **All of the following information reported and provided to**
 26 **the department under section 1325b:**

27 (i) **The group capital calculation.**

28 (ii) **The group capital ratio produced within the group capital**
 29 **calculation.**

(iii) Any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any United States group-wide supervisor.

(b) All of the following information reported and provided to the department under section 1325c:

(i) The liquidity stress test results.

(ii) Any supporting disclosures to the liquidity stress test results.

(iii) Any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United States group-wide supervisors.

(6) The director or a person who received documents, materials, or other information while acting under the authority of the director or with whom the documents, materials, or other information is shared under this ~~act~~**chapter** shall not testify in a private civil or administrative action concerning ~~confidential~~ documents, materials, or information ~~obtained under sections 1351 and 1357 and information reported under sections 1324 to 1333~~**described in subsections (1) to (5).**

(7) ~~(2) The~~**Except as otherwise provided in subsection (8),** the director may share documents, materials, or other information, including ~~the confidential and privileged documents, materials, or information obtained under sections 1351 and 1357 and information reported under sections 1324 to 1333 with other~~**documents, materials, and information that are confidential, privileged, proprietary, and constitute trade secrets under subsection (1), with any of the following entities if the entity agrees in writing to maintain the confidentiality and privileged status of the document, material, or information and has verified in writing the**

1 **legal authority to maintain the confidentiality:**

2 (a) A state, federal, ~~and or~~ international regulatory
3 ~~agencies; the agency.~~

4 (b) The NAIC. ~~;~~ and

5 (c) A third-party consultant designated by the director.

6 (d) A state, federal, ~~and or~~ international law enforcement
7 ~~authorities, authority,~~ including ~~members~~ a member of a supervisory
8 college under section 1357. ~~, if the regulator, the NAIC, or law~~
9 ~~enforcement authority agrees in writing to maintain the~~
10 ~~confidentiality and privileged status of the document, material, or~~
11 ~~other information and has verified in writing the legal authority~~
12 ~~to maintain confidentiality.~~

13 (8) The director may only share confidential and privileged
14 documents, material, or information **that are** reported under section
15 1325a with commissioners of states having statutes or regulations
16 substantially similar to ~~subsection~~ **subsections (1) to (5)** and who
17 have agreed in writing to not disclose the **documents, materials, or**
18 information.

19 (9) The director may receive documents, materials, or
20 information, including ~~otherwise confidential and privileged~~
21 documents, materials, or information **that are confidential,**
22 **privileged, or proprietary or that constitute trade secrets under**
23 **subsection (1),** from the NAIC **and its affiliates and subsidiaries**
24 and from regulatory and law enforcement officials of other foreign
25 or domestic jurisdictions, and shall maintain as confidential or
26 privileged any document, material, or information received with
27 notice or the understanding that it is confidential or privileged
28 under the laws of the jurisdiction that is the source of the
29 document, material, or information.

(10) The disclosure ~~or sharing of information, a document, or other material of documents, materials, or other information~~ to the director or ~~other~~ **another** person under this section **or the sharing of documents, materials, or other information under this section** is not a waiver of an applicable privilege or claim of confidentiality.

(11) ~~(3)~~ Documents, materials, or other information in the possession or control of the ~~department or the~~ NAIC **or a third-party consultant designated by the director** under this chapter are confidential and privileged, are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, are not subject to subpoena, and are not subject to discovery or admissible as evidence in a private civil or administrative action.

(12) The director shall enter into written agreements with the NAIC **and any third-party consultant designated by the director** governing sharing and use of information provided under this chapter. The written agreement must ~~specify~~ **meet all of the following requirements:**

(a) **Specify** procedures and protocols regarding the confidentiality and security of information shared with the NAIC ~~and its affiliates and subsidiaries,~~ **or a third-party consultant designated by the director under this chapter,** including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The ~~agreement must provide~~ **procedures and protocols must require the recipient of the shared documents, materials, or information to agree in writing to maintain the confidentiality and privileged status of the documents, materials, and information and verify in writing the legal authority to maintain the confidentiality.**

1 **(b) Specify** that the director owns the information shared with
2 the NAIC ~~and its affiliates and subsidiaries or a third-party~~
3 **consultant designated by the director under this chapter** and that
4 the NAIC's **or the third-party consultant's** use of the information
5 is subject to the direction of the director. ~~The agreement must~~
6 ~~provide for~~

7 **(c) Prohibit the NAIC or a third-party consultant designated**
8 **by the director from storing information shared under this chapter**
9 **in a permanent database after the underlying analysis is completed.**
10 **This subdivision does not apply to documents, materials, or other**
11 **information reported under 1325c.**

12 **(d) Require** prompt notice to be given to an insurer whose
13 confidential information in possession of the NAIC **or a third-party**
14 **consultant designated by the director** under this chapter is subject
15 to a request or subpoena to the NAIC **or a third-party consultant**
16 **designated by the director** for disclosure or production. ~~and~~
17 ~~require~~

18 **(e) Require** the NAIC ~~and its affiliates and subsidiaries or a~~
19 **third-party consultant designated by the director** to consent to
20 intervention by an insurer in a judicial or administrative action
21 in which the NAIC or the third-party consultant designated by the
22 director may be required to disclose confidential information about
23 the insurer shared under this chapter with the NAIC or third-party
24 consultant designated by the director.

25 **(13)** In addition to any requirement for an agreement set forth
26 in subsection (12), if a third-party consultant designated by the
27 director is a party to the agreement, with regard to documents,
28 materials, or information reported under section 1325c, the
29 agreement must provide for notification of the identity of the

1 third-party consultant to the applicable insurer.

2 (14) The group capital calculation and resulting group capital
3 ratio required under section 1325b and the NAIC liquidity stress
4 test and its results and supporting disclosures required under
5 section 1325c are regulatory tools for assessing group risk and
6 capital adequacy and group liquidity risks, respectively, and are
7 not intended as a means to rank insurers or insurance holding
8 company systems.

9 (15) Except as otherwise provided under this chapter, a person
10 shall not, directly or indirectly, make, publish, disseminate,
11 circulate, or place before the public, in a newspaper, magazine, or
12 other publication, in the form of a notice, circular, pamphlet,
13 letter, or poster, over any radio or television station, by any
14 electronic means of communication available to the public, or in
15 any other way as an advertisement, announcement, or statement
16 containing a representation or statement with regard to the group
17 capital calculation or group capital ratio under section 1325b, or
18 the liquidity stress test results or supporting disclosures for the
19 liquidity stress tests under section 1325c, of any insurer or any
20 insurer group, or of any component derived in the calculation by
21 any insurer group, or of any component derived in the calculation
22 by any insurer, broker, or other person engaged in any manner in
23 the insurance business, that would be misleading.

24 (16) If any materially false statement with respect to the
25 group capital calculation, resulting group capital ratio, an
26 inappropriate comparison of any amount to an insurer's or insurance
27 group's group capital calculation, resulting group capital ratio
28 under section 1325b or liquidity stress test result, supporting
29 disclosures for the liquidity stress test, or an inappropriate

1 comparison of any amount to an insurer's or insurance group's
 2 liquidity stress test result or supporting disclosures under
 3 section 1325c is published in any written publication and the
 4 insurer is able to demonstrate to the director with substantial
 5 proof the falsity of the statement or its inappropriateness, the
 6 insurer may publish announcements in a written publication if the
 7 sole purpose of the announcement is to rebut the materially false
 8 statement.

9 (17) ~~(4)~~ The sharing of information by the director under this
 10 chapter is not a delegation of regulatory authority or rule-making,
 11 and the director is solely responsible for the administration,
 12 execution, and enforcement ~~of the provisions~~ of this chapter.

13 Enacting section 1. This amendatory act does not take effect
 14 unless all of the following bills of the 101st Legislature are
 15 enacted into law:

16 (a) House Bill No. 6297.

17 (b) House Bill No. 6298.

18 (c) House Bill No. 6299.

19 (d) House Bill No. 6301.

20 (e) House Bill No. 6302.

21 (f) House Bill No. 6303.