



## Ohio Revised Code Section 1753.38 Confidentiality.

Effective: March 15, 2001

Legislation: House Bill 714 - 123rd General Assembly

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(A) The superintendent of insurance shall keep all of the following confidential:

(1) An RBC report, to the extent that information contained in the report is not required to be included in an annual statement available to the public;

(2) An RBC plan;

(3) The results of, or reports on, examinations or analyses conducted pursuant to division (B)(2) of section 1753.34 of the Revised Code, and a corrective order issued pursuant to division (B)(3) of section 1753.34 of the Revised Code.

A disclosure to the superintendent of these plans, reports, information, and orders does not constitute a waiver of any applicable privilege or claim of confidentiality in the plans, reports, information, and orders.

(B) Notwithstanding division (A) of this section:

(1) The plans, reports, information, and orders described in division (A) of this section may be used by the superintendent in accordance with the insurance laws of this state.

(2) In the performance of the superintendent's duties, the superintendent may share the plans, reports, information, and orders with state, federal, and international regulatory agencies and law enforcement authorities, and with the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidentiality of the plans, reports, information, and orders.

(C)(1) The plans, reports, information, and orders described in division (A) of this section are not public records for purposes of section 149.43 of the Revised Code and shall not be subject to subpoena. The plans, reports, information, and orders shall not be subject to discovery or admissible



in evidence in any private civil action.

(2) Neither the superintendent nor any person who receives the plans, reports, information, and orders while acting under the authority of the superintendent shall be permitted or required to testify in any private civil action concerning these plans, reports, information, and orders.

(D) A comparison of a health insuring corporation's total adjusted capital to any of its RBC levels shall not be used to rank health insuring corporations.

(E) RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans shall not be used by the superintendent for ratemaking, considered or introduced as evidence in any rate proceeding, or used by the superintendent to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health insuring corporation or any affiliate is authorized to write.

(F) Except as otherwise required under Chapter 1751. or 1753. of the Revised Code, it is an unfair and deceptive act or practice in the business of insurance under sections 3901.19 to 3901.26 of the Revised Code for any person to make, publish, disseminate, circulate, or place before the public, or to cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other manner, an advertisement, announcement, or statement, written or oral, that contains an assertion, representation, or statement, regarding the RBC levels of a health insuring corporation, or any component derived in the calculation of the RBC levels.

(G) If any materially false statement is published comparing a health insuring corporation's total adjusted capital to its RBC levels, or any inappropriate comparison of any other amount to any of the health insuring corporation's RBC levels is published, and the health insuring corporation is able to demonstrate to the superintendent with substantial proof the falsity of the statement or the inappropriateness of the comparison, then the health insuring corporation may publish with the superintendent's approval an announcement in a written publication to rebut the materially false statement or inappropriate comparison.