

INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8]

(Division 1 enacted by Stats. 1935, Ch. 145.)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8]

(Part 2 enacted by Stats. 1935, Ch. 145.)

CHAPTER 1. General Regulations [680 - 1113]

(Chapter 1 enacted by Stats. 1935, Ch. 145.)

ARTICLE 4. Examination by Commissioner [729 - 738]

(Article 4 enacted by Stats. 1935, Ch. 145.)

729. As used in this article, the following terms have the following meanings:

(a) "Company" means any person engaging in, or proposing or attempting to engage in, any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner.

(b) "Examiner" means any individual or firm authorized by the commissioner to conduct an examination under this article.

(c) "Person" means any person, association, organization, business trust, partnership, limited liability company, or corporation, or any affiliate thereof.

(Amended by Stats. 1994, Ch. 1010, Sec. 173. Effective January 1, 1995.)

730. (a) The commissioner, whenever he or she deems necessary or whenever he or she is requested by verified petition, signed by 25 persons interested as shareholders, policyholders, or creditors of any admitted insurer showing that the insurer is insolvent under this code, or upon information that any insurer has violated any provision of Article 7 (commencing with Section 800), shall examine the business and affairs of the insurer. The commissioner shall so examine every domestic insurer before issuing to it a certificate of authority other than a renewal.

(b) The commissioner may conduct an examination under this article of any company as often as the commissioner in his or her discretion deems appropriate but shall, at a minimum, conduct an examination of every insurer admitted in this state not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, market analysis results, including consumer complaint analysis, evaluation of ongoing regulatory activities, analysis of data derived from industry surveys or interrogatories, and other criteria as set forth in the Examiner's Handbook or in the Market Regulation Handbook adopted by the National Association of Insurance Commissioners that are in effect when the commissioner exercises discretion under this section.

(c) For purposes of completing an examination of any company under this article, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the discretion of the commissioner, necessary or material to the examination of the company.

(d) In lieu of an examination under this article of any foreign or alien insurer admitted in this state, the commissioner may accept an examination report on the company as prepared by the insurance department of the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, these reports may only be accepted if (1) the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioner's Financial Regulation Standards and Accreditation Program, or (2) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(e) The commissioner may postpone a market conduct examination otherwise required by this article for a period of up to three years if information derived from a market analysis indicates all of the following:

(1) The prior examination of the insurer resulted in no significant negative findings.

(2) The number of consumer complaints received by the insurer is in the lowest quartile of complaints, on a ratio basis, for insurers in that line of business.

(3) The market analysis identifies no other issues of significant concern.

(Amended by Stats. 2010, Ch. 387, Sec. 2. Effective January 1, 2011.)

731. Whenever any foreign insurer applies for admission the commissioner may make, or cause to be made by the insurance authority of the State where the insurer is organized, an examination of its insurance business and affairs.

(Enacted by Stats. 1935, Ch. 145.)

732. An insurer organized or existing under the laws of any country outside of the United States shall be deemed to be organized, within the meaning of this article, in any State wherein such insurer maintains the deposits to protect policyholders as required by this code.

(Enacted by Stats. 1935, Ch. 145.)

733. In making such examination the commissioner:

(a) Shall have free access to all the books and papers of the company.

(b) Shall thoroughly inspect and examine all its affairs.

(c) Shall ascertain its condition and ability to fulfill its obligations.

(d) Shall ascertain if it has complied with all laws applicable to its insurance transactions.

(e) May appraise or cause to be appraised by competent appraisers appointed by him or her all property in which the insurer has or claims an interest, or which is security, in any form, for the payment of any debt or obligation to the insurer. All such appraisals of real property shall be in writing.

(f) Shall, in conducting the examination, observe those guidelines and procedures set forth in the Examiner's Handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ other guidelines or procedures which the commissioner may deem appropriate.

(g) May retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, or any of the employees of the department assigned by the commissioner to carry out the purposes of this article, the cost of which shall be borne by the company subject to examination.

(Amended by Stats. 1992, Ch. 614, Sec. 1.2. Effective January 1, 1993.)

734. Every company or person from whom information is sought, and its officers, directors, employees, and agents, shall provide to the examiners appointed pursuant to this article, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall assist the examiners and aid in the examination so far as it is in their power to do so. The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. If he or she finds the books to be carelessly or improperly kept or posted, he or she shall employ sworn experts to rewrite, post, and balance the books at the insurer's expense.

(Amended by Stats. 1992, Ch. 614, Sec. 1.3. Effective January 1, 1993.)

734.1. (a) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of the examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that the company has 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(b) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall either adopt the report as filed or with modifications or corrections, or reject the report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile pursuant to subdivision (a).

(c) (1) Nothing contained in this article shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(2) If the commissioner terminates or suspends an examination that includes an examination of claims practices, the commissioner shall within 10 days of the termination or suspension transmit a copy of the complete examination file to the State Bureau of Audits. The State Auditor shall audit the file pursuant to Section 10527 of the Government Code to determine the propriety of the termination or suspension.

(Amended by Stats. 2000, Ch. 997, Sec. 1. Effective January 1, 2001.)

735. The hereinafter designated officer of each domestic insurer shall inform the members present at the next meeting of its governing body of the receipt from the office of the commissioner of the report of every examination of such insurer, both in the form first formally prepared by the examiners and in the form as finally

settled and officially filed by the commissioner or a deputy designated by him. Such officer shall also inform such members that a copy of such report is available for inspection of any member of such governing body. There shall be entered in the minutes of each such meeting the fact that such officer did so inform the members present.

The officer above referred to, in the case of a stock or mutual insurer, shall be its secretary or comparable officer if there is no secretary. This section shall specifically apply to reciprocals and interinsurance exchanges and in that case the officer above referred to shall be the principal individual, partner or officer of its attorney-in-fact, and "governing body" shall have reference to the body exercising the subscribers' rights provided for in Section 1308.

(Added by Stats. 1980, Ch. 10, Sec. 1. Effective February 12, 1980.)

735.5. (a) Nothing contained in this article shall be construed to limit the commissioner's authority to use and, if appropriate, to make public, any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her discretion, deem appropriate.

(b) Nothing contained in this code shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, market analysis data, or any matter relating thereto, to the insurance department of this or 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, or to the National Association of Insurance Commissioners, provided the recipient of the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this article, unless the prior written consent of the company to which it pertains has been obtained.

(c) All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made pursuant to this article shall be given confidential treatment and are not subject to subpoena and shall not be made public by the commissioner or any other person, except to the extent provided in subdivision (a) or (b).

(Amended by Stats. 2009, Ch. 234, Sec. 3. Effective January 1, 2010.)

736. All examinations and analyses performed pursuant to Section 730 shall be at the expense of the insurer, organization, or person examined, except that special examinations which are in addition to regular examinations may be at the expense of the state in the discretion of the commissioner. The costs and expenses of all of those examinations shall be paid from the support appropriation for the Department of Insurance current at the time of the examination but shall be charged to and collected from the insurer, organization or person examined. If any insurer, organization, or person refuses to pay those costs and expenses promptly when due, the commissioner may refuse to issue its certificate of authority, certificate of exemption, or license, as the case may be, and may revoke any existing certificate of authority, certificate of exemption, or license.

(Amended by Stats. 2009, Ch. 234, Sec. 4. Effective January 1, 2010.)

737. (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this article.

(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this article, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section shall not abrogate or modify in any way any common law or statutory privilege or immunity previously enjoyed by any person identified in subdivision (a).

(d) A person identified in subdivision (a) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities engaged in while carrying out the provisions of this article and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(Added by Stats. 1992, Ch. 614, Sec. 1.6. Effective January 1, 1993.)

738. The commissioner shall have the same powers and authority to examine the State Compensation Insurance Fund as are conferred upon him by law relative to the examination of other insurers except where the fund is specifically exempted by reference.

(Amended by Stats. 2006, Ch. 740, Sec. 3.3. Effective January 1, 2007.)