CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

Referred to in §87.4, 296.7, 331.301, 364.4, 505.28, 505.29, 507C.12, 508.36, 510B.3, 514.10, 521A.6, 521H.1, 521H.6, 669.14, 670.7

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507.1 Purpose — definitions.

1. The purpose of this chapter is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The chapter is intended to enable the commissioner to adopt a flexible system of examinations which directs resources as deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this state.

2. As used in this chapter, unless the context otherwise requires:

a. *"Commissioner"* means the commissioner of insurance of this state.

b. *"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.

c. *"Division"* means the division of insurance of the department of commerce.

d. *"Examiner"* means any individual or firm authorized by the commissioner to conduct an examination pursuant to this chapter.

e. *"Insurer"* includes all companies or associations organized under chapter 508, 511, 512A, 512B, 514, 514B, 515, 515C, or 518A, associations subject to chapters 518 and 520, and companies or associations admitted or seeking to be admitted to this state under any of those chapters.

f. *"Person"* means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

[S13, §1821-i; C24, 27, 31, 35, 39, §**8625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.1]
88 Acts, ch 1112, §301; 92 Acts, ch 1117, §1
Referred to in §515I.2

507.2 Authority, scope, and scheduling of examinations.

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company as often as the commissioner deems appropriate, but at a minimum, shall conduct an examination of any domestic insurer licensed in this state no less than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

2. For purposes of completing an examination of any company pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

3. In lieu of an examination under this chapter of any foreign or alien insurer licensed in

this state, the commissioner may accept an examination report on the company as prepared by the regulatory authority for insurance for the company's state of domicile or port-of-entry state.

[C97, §1753; S13, §1821-a, -h; C24, 27, 31, 35, 39, §**8626, 8642, 9009, 9061;** C46, §507.2, 507.18, 515.130, 518.36; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.2]

92 Acts, ch 1117, §2; 95 Acts, ch 185, §4

507.3 Conduct of examinations.

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ other guidelines as the commissioner deems appropriate.

2. A company or person from whom information is sought and its officers, directors, and agents shall provide to the examiners appointed under subsection 1, 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 facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examinations or to comply with any reasonable written request of the examiners is grounds for suspension or revocation of, or nonrenewal of, any license or authority held by the company to engage in the business of insurance or other business subject to the commissioner's jurisdiction. Should a company decline or refuse to submit to an examination as provided in this chapter, the commissioner shall immediately revoke its certificate of authority, and if the company is organized under the laws of this state, the commissioner shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the company.

3. The commissioner or any of the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

4. When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

5. This chapter does not 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. Findings of fact and conclusions made pursuant to any examination are deemed to be prima facie evidence in any legal or regulatory action.

[S13, §1821-b; C24, 27, 31, 35, 39, §**8627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.3]

92 Acts, ch 1117, §3; 97 Acts, ch 186, §2

507.4 Examiners — salaries.

1. The commissioner of insurance may appoint insurance examiners, at least one of whom shall be an experienced actuary, and at least one of whom shall be an experienced and competent fire insurance accountant, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. The entire time of the examiners shall be under the control of the commissioner, and shall be employed as the commissioner may direct.

2. The commissioner may, when in the commissioner's judgment it is advisable,

appoint assistants to aid in conducting examinations. The commissioner shall employ rates of compensation consistent with current standards in the industry for certified public accountants, attorneys, and skilled insurance examiners. The commissioner may use compensation rates suggested by the national association of insurance commissioners. Insurance examiners employed under this section shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17. Compensation shall be paid from appropriations for such purposes upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.4]
2008 Acts, ch 1123, §11
Referred to in §87.11C

507.5 Chief examiner.

The commissioner may appoint a chief examiner who shall supervise insurance company examinations and perform such other duties as may be assigned by the commissioner. The chief examiner shall receive a salary to be fixed by the commissioner. The chief examiner shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17.

91 Acts, ch 26, §33; 2003 Acts, ch 145, §270
Referred to in §87.11C, 505.7

507.6 Conflict of interest.

1. An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being any of the following:

a. A policyholder or claimant under an insurance policy.

b. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business.

c. An investment owner in shares of regulated diversified investment companies.

d. A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

2. Notwithstanding the requirements of subsection 1, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

[C24, 27, 31, 35, 39, §**8630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.6]
92 Acts, ch 1117, §4
Referred to in §87.11C

507.7 Expenses.

Said examiners and assistants and the said commissioner shall receive actual and necessary traveling, hotel, and other expenses while engaged in conducting examinations away from their respective places of residence.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.7]
Referred to in §87.11C, 505.7, 521A.6

507.8 Payment by company.

The commissioner shall upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the

state, and the commissioner may also revoke the certificate of authority of such company to transact business within this state.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.8]
88 Acts, ch 1112, §302
Referred to in §505.7, 507.4, 508E.7

507.9 Fees — accounting.

All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be turned in to the state treasury for deposit as provided in section 505.7.

[S13, §1821-c; C24, 27, 31, 35, 39, §**8633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.9]
2009 Acts, ch 181, §64
Referred to in §505.7, 507.4, 508E.7
Deposit of fees, §12.10

507.10 Examination reports.

1. *General description.* All examination reports shall be comprised only of 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 or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. *Filing of examination report.* No later than sixty days following completion of the examination, the examiner in charge shall file with the division a verified written report of examination. Upon receipt of the verified report and after administrative review, the division shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. *Adoption of report on examination.* Within twenty 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 work papers and enter an order which does one of the following:

a. Adopts 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 or a rule or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

b. Rejects the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling pursuant to subsection 1 above.

c. Calls for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

4. *Orders and procedures.*

a. All orders entered pursuant to subsection 3, paragraph "*a*", shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order is a final administrative decision and may be appealed pursuant to chapter 17A, and shall be served upon the company by certified mail, together with a copy of the adopted examination report. The board of directors of the company shall timely review the adopted report. The minutes of the meeting of the board at which the adopted report is considered shall reflect that each member of the board has reviewed the adopted report.

b. Any hearing conducted under subsection 3, paragraph "*c*", by the commissioner 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 indicated as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection 3, paragraph "*a*".

(1) (a) The commissioner 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 which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or a representative acting on the commissioner's behalf 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 division of insurance, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or a representative acting on the commissioner's behalf shall be under oath and preserved for the record.

(b) This section does not require the division of insurance to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal or juvenile justice agency.

(2) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the division may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or the commissioner's representative. The company and the division shall be permitted to make closing statements and may be represented by counsel.

5. *Publication and use.*

a. Upon the adoption of the preliminary examination report under subsection 3, paragraph *"a"*, the commissioner shall hold the content of the final examination report as private and confidential information not subject to disclosure and it is not a public record under chapter 22, for a period of twenty days except to the extent provided in subsection 2. After the twenty-day period has elapsed, the commissioner may open the final report for public inspection so long as no court of competent jurisdiction has stayed its publication.

b. The commissioner is not prevented from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the report, to an insurance department of any other state or country, to the national association of insurance commissioners, or to law enforcement officials of this or any other state or an agency of the federal government at any time, so long as such agency or office receiving the report, or matters relating to the report, agrees in writing to maintain the confidentiality of the report or such matters in a manner consistent with this chapter.

c. If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceeding or action as provided by law.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.10]

92 Acts, ch 1117, §5; 95 Acts, ch 191, §25; 2001 Acts, ch 69, §3; 2006 Acts, ch 1117, §19; 2012 Acts, ch 1023, §157; 2013 Acts, ch 124, §9

Referred to in §511.23

507.11 Repealed by 91 Acts, ch 26, §61.

507.12 Procedure against life companies.

In case of companies organized under the provisions of chapter 508, the officers shall proceed as provided in sections 508.18 and 508.19.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.12]

91 Acts, ch 26, §57

Referred to in §511.23

507.13 Repealed by 92 Acts, ch 1117, §42.

507.14 Confidential documents — exceptions.

1. A preliminary report of an examination of a domestic or foreign insurer, and all notes, work papers, or other documents related to an examination of an insurer are confidential records under chapter 22 except when sought by the insurer to whom they relate, an insurance regulator of another state, or the national association of insurance commissioners,

and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner under chapter 507C.

b. An administrative proceeding brought by the insurance division under chapter 17A.

c. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

d. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

e. An action brought in a shareholders' derivative suit against an insurer.

f. An action brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of insurer funds.

2. A report of an examination of a domestic or foreign insurer which is preliminary under the rules of the division is a confidential record under chapter 22 except when sought by the insurer to which the report relates or an insurance regulator of another state, and is privileged and confidential in any judicial or administrative proceeding.

3. All work papers, notes, recorded information, documents, market conduct annual statements, and copies thereof that are produced or obtained by or disclosed to the commissioner or any other person in the course of analysis by the commissioner of the financial condition or market conduct of an insurer are confidential records under chapter 22 and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner under chapter 507C.

b. An administrative proceeding brought by the insurance division under chapter 17A.

c. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

d. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

4. Confidential documents, materials, information, administrative or judicial orders, or other actions may be disclosed to a regulatory official of any state, federal agency, or foreign country provided that the recipients are required, under the law of the recipients' jurisdiction, to maintain confidentiality of the documents, materials, information, orders, or other actions. Confidential records may be disclosed to the national association of insurance commissioners, the international association of insurance supervisors, and the bank for international settlements provided that the associations and bank certify by written statement that the confidentiality of the records will be maintained.

5. A financial statement filed by an employer self-insuring workers' compensation liability pursuant to section 87.11, or the working papers of an examiner or the division in connection with calculating appropriate security and reserves for the self-insured employer are confidential records under chapter 22 except when sought by the employer to which the financial statement or working papers relate or an insurance or workers' compensation self-insurance regulator of another state, and are privileged and confidential in any judicial or administrative proceeding. The financial information of a nonpublicly traded employer which self-insures for workers' compensation liability pursuant to section 87.11 is protected as proprietary trade secrets to the extent consistent with the commissioner's duties to oversee the security of self-insured workers' compensation liability.

6. Analysis notes, work papers, or other documents related to the analysis of an insurer are confidential records under chapter 22.

[S13, §1821-d; C24, 27, 31, 35, 39, §**8638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.14]

90 Acts, ch 1234, §3; 91 Acts, ch 26, §34; 92 Acts, ch 1117, §6; 2004 Acts, ch 1110, §17; 2006 Acts, ch 1117, §20; 2012 Acts, ch 1138, §34; 2013 Acts, ch 90, §150

Referred to in **§22.7(53)**, 508.36, 508E.7, 515H.3, 616.15

Documents in support of statements of actuarial opinion, see §515H.3

507.15 Transfer pending examination.

Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that may have occurred previous to such transfer.

[S13, §1821-e; C24, 27, 31, 35, 39, §**8639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.15]

507.16 Unlawful solicitation of business.

It shall be unlawful for any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, to solicit or receive applications for insurance for the company, or to do any other act or thing toward receiving or procuring any new business for the company. The provisions of sections 505.7A and 511.17 are extended to all companies contemplated by this chapter.

[S13, §1821-f; C24, 27, 31, 35, 39, §**8640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.16]

2004 Acts, ch 1110, §18; 2007 Acts, ch 126, §89

507.17 Immunity from liability.

1. A cause of action does not arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representative, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

2. A cause of action does not 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 an examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

3. This section does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in subsection 1.

4. A person identified in subsection 1 is entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if the proceeding has a reasonable basis in law or fact at the time that it is initiated.

[S13, §1821-g; C24, 27, 31, 35, 39, §**8641;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §507.17]

92 Acts, ch 1117, §7