

31A-2-204 Conducting examinations.

- (1)
 - (a) For each examination under Section 31A-2-203, the commissioner shall issue an order:
 - (i) stating the scope of the examination; and
 - (ii) designating the examiner in charge.
 - (b) The commissioner need not give advance notice of an examination to an examinee.
 - (c) The examiner in charge shall give the examinee a copy of the order issued under this Subsection (1).
 - (d)
 - (i) The commissioner may alter the scope or nature of an examination at any time without advance notice to the examinee.
 - (ii) If the commissioner amends an order described in this Subsection (1), the commissioner shall provide a copy of any amended order to the examinee.
 - (e) Statements in the commissioner's examination order concerning examination scope are for the examiner's guidance only.
 - (f) Examining relevant matters not mentioned in an order issued under this Subsection (1) is not a violation of this title.
- (2) The commissioner shall, whenever practicable, cooperate with the insurance regulators of other states by conducting joint examinations of:
 - (a) multistate insurers doing business in this state; or
 - (b) other multistate licensees doing business in this state.
- (3) An examiner authorized by the commissioner shall, when necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents, or property of:
 - (a) the examinee; and
 - (b) any of the following if the premises, books, records, files, securities, documents, or property relate to the affairs of the examinee:
 - (i) an officer of the examinee;
 - (ii) any other person who:
 - (A) has executive authority over the examinee; or
 - (B) is in charge of any segment of the examinee's affairs; or
 - (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).
- (4)
 - (a) The officers, employees, and agents of the examinee and of persons under Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination.
 - (b) A person may not obstruct or interfere with the examination except by legal process.
- (5) If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, the commissioner may employ experts to rewrite, post, or balance the accounts or records at the expense of the examinee.
- (6)
 - (a) The examiner in charge of an examination shall make a report of the examination no later than 60 days after the completion of the examination that shall include:
 - (i) the information and analysis ordered under Subsection (1); and
 - (ii) the examiner's recommendations.
 - (b) At the option of the examiner in charge, preparation of the report may include conferences with the examinee or representatives of the examinee.

- (c) The report is confidential until the report becomes a public document under Subsection (7), except the commissioner may use information from the report as a basis for action under Chapter 27a, Insurer Receivership Act.
- (7)
- (a) The commissioner shall serve a copy of the examination report described in Subsection (6) upon the examinee.
 - (b) Within 20 days after service, the examinee shall:
 - (i) accept the examination report as written; or
 - (ii) request agency action to modify the examination report.
 - (c) The report is considered accepted under this Subsection (7) if the examinee does not file a request for agency action to modify the report within 20 days after service of the report.
 - (d) If the examination report is accepted:
 - (i) the examination report immediately becomes a public document; and
 - (ii) the commissioner shall distribute the examination report to all jurisdictions in which the examinee is authorized to do business.
 - (e)
 - (i) Any adjudicative proceeding held as a result of the examinee's request for agency action shall, upon the examinee's demand, be closed to the public, except that the commissioner need not exclude any participating examiner from this closed hearing.
 - (ii) Within 20 days after the hearing held under this Subsection (7)(e), the commissioner shall:
 - (A) adopt the examination report with any necessary modifications; and
 - (B) serve a copy of the adopted report upon the examinee.
 - (iii) Unless the examinee seeks judicial relief, the adopted examination report:
 - (A) shall become a public document 10 days after service; and
 - (B) may be distributed as described in this section.
 - (f) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, to the extent that this section is in conflict with Title 63G, Chapter 4, Administrative Procedures Act, this section governs:
 - (i) a request for agency action under this section; or
 - (ii) adjudicative proceeding under this section.
- (8) The examinee shall promptly furnish copies of the adopted examination report described in Subsection (7) to each member of the examinee's board.
- (9) After an examination report becomes a public document under Subsection (7), the commissioner may furnish, without cost or at a reasonable price set under Section 31A-3-103, a copy of the examination report to interested persons, including:
- (a) a member of the board of the examinee; or
 - (b) one or more newspapers in this state.
- (10)
- (a) In a proceeding by or against the examinee, or any officer or agent of the examinee, the examination report as adopted by the commissioner is admissible as evidence of the facts stated in the report.
 - (b) In any proceeding commenced under Chapter 27a, Insurer Receivership Act, the examination report, whether adopted by the commissioner or not, is admissible as evidence of the facts stated in the examination report.

Amended by Chapter 382, 2008 General Session