

**Chapter 48.03 RCW
EXAMINATIONS**

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RCW 48.03.005 Application. This chapter applies to the financial analysis and examination of insurers and other regulated entities. [2007 c 82 s 1.]

RCW 48.03.010 Examination of insurers, bureaus. (1) The commissioner shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as he or she deems advisable. The commissioner shall so examine each insurer holding a certificate of authority or certificate of registration not less frequently than every five years. Examination of an alien insurer may be limited to its insurance transactions in the United States. In scheduling and determining the nature, scope, and frequency of an examination, 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 examiner's handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(2) As often as the commissioner deems advisable and at least once in five years, the commissioner shall fully examine each rating organization and examining bureau licensed in this state. As often as he or she deems it advisable the commissioner may examine each advisory organization, any statistical reporting agent designated by the commissioner under RCW 48.29.017, and each joint underwriting or joint reinsurance group, association, or organization.

(3) The commissioner shall in like manner examine each insurer or rating organization applying for authority to do business in this state.

(4) In lieu of making an examination under this chapter, the commissioner may accept a full report of the last recent examination of a nondomestic rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization,

as prepared by the insurance supervisory official of the state of domicile or of entry. In lieu of an examination under this chapter of a foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, an examination report may be accepted only if: (a) That insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' financial regulation standards and accreditation program; or (b) the examination was performed either under the supervision of an accredited insurance department or with the participation of one or more examiners employed by an accredited state insurance department 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.

(5) The commissioner may elect to accept and rely on an audit report made by an independent certified public accountant for the insurer in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination.

(6) For the purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any managing general agent or any other person, or the business of any managing general agent or other person, insofar as that examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company. [2013 c 65 s 3; 1993 c 462 s 43; 1982 c 181 s 1; 1979 c 139 s 1; 1947 c 79 s . 03.01; Rem. Supp. 1947 s 45.03.01.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Severability—1982 c 181: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 181 s 28.]

RCW 48.03.020 Examination of producers, surplus line brokers, adjusters, title insurance agents, managers, or promoters. For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he or she deems advisable examine the accounts, records, documents, and transactions of:

(1) Any insurance producer, surplus line broker, adjuster, or title insurance agent.

(2) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.

(3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a

domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer. [2009 c 162 s 1; 2008 c 217 s 1; 1947 c 79 s .03.02; Rem. Supp. 1947 s 45.03.02.]

Effective date—2009 c 162: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 162 s 36.]

Severability—2008 c 217: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 217 s 101.]

Effective date—2008 c 217: "This act takes effect July 1, 2009." [2008 c 217 s 102.]

RCW 48.03.025 Examiners—Scope of examination—Examiners' handbook. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall 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 such other guidelines or procedures as the commissioner may deem appropriate. [1993 c 462 s 44.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

RCW 48.03.030 Access to records on examination—Correction of accounts. (1) Every person being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in his or her possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he or she may employ experts to rewrite, post or balance them at the expense of the person being examined. [2009 c 549 s 7013; 1947 c 79 s .03.03; Rem. Supp. 1947 s 45.03.03.]

RCW 48.03.040 Examination reports—Consideration by commissioner—Orders—Confidentiality. (1) No later than sixty days after completion of each examination, the commissioner shall make a full written report of each examination made by him or her containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(2) The report shall be certified by the commissioner or by his or her examiner in charge of the examination, and shall be filed in the commissioner's office subject to subsection (3) of this section.

(3) The commissioner shall furnish a copy of the examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If such person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(4) Within thirty days of the end of the period described in subsection (3) of this section, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) Adopting 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, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile under this section; or

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

(5) All orders entered under subsection (4) of this section must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Such an order is considered a final administrative decision and may be appealed under the Administrative Procedure Act, chapter 34.05 RCW, and must be served upon the company by certified mail or certifiable electronic means, together with a copy of the adopted examination report. A copy of the adopted examination report must be sent by certified mail or certifiable electronic means to each director at the director's residence address or to a personal email account.

(6) (a) Upon the adoption of the examination report under subsection (4) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(b) Nothing in this title prohibits the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of 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, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, he or she may initiate any proceedings or actions as provided by law.

(d) Nothing contained in this section requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency. [2008 c 100 s 1; 1993 c 462 s 45; 1965 ex.s. c 70 s 1; 1947 c 79 s .03.04; Rem. Supp. 1947 s 45.03.04.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

RCW 48.03.050 Reports withheld. The commissioner may withhold from public inspection any examination or investigation report for so long as he or she deems it advisable, subject to RCW 48.32.080. [1993 c 462 s 46; 1947 c 79 s .03.05; Rem. Supp. 1947 s 45.03.05.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

RCW 48.03.060 Examination expense. (1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees must, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, must be made by the commissioner or by examiners designated by the commissioner and must be at the expense of the person examined; but a domestic insurer must not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) 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 cost of which must be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable must reimburse the state upon presentation of an itemized statement for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington must be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the state director of personnel, and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer must pay the

examination expense and costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners must not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

(6) The expense of the examination of any statistical reporting agent designated by the commissioner under RCW 48.29.017 must be borne by and apportioned among all authorized title insurance companies and licensed title insurance agents in this state. [2013 c 65 s 4; 2011 c 47 s 4; 2004 c 260 s 23; 1995 c 152 s 2. Prior: 1993 c 462 s 47; 1993 c 281 s 55; 1981 c 339 s 2; 1979 ex.s. c 35 s 1; 1947 c 79 s .03.06; Rem. Supp. 1947 s 45.03.06.]

Effective date—2004 c 260: See RCW 48.125.901.

Intent—1995 c 152: "The only intent of the legislature in chapter 152, Laws of 1995 is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted." [1995 c 152 s 1.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1993 c 281: See note following RCW 41.06.022.

RCW 48.03.065 Appointments by commissioner—Examiners—Exceptions. (1) No examiner may 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 a person subject to examination under this chapter. This section does not automatically preclude an examiner from being:

- (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; or
- (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) of this section, 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 those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. [1993 c 462 s 48.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

RCW 48.03.070 Witnesses—Subpoenas—Depositions—Oaths. (1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) Enforcement of subpoenas shall be in accord with RCW 34.05.588. [1989 c 175 s 112; 1967 c 237 s 15; 1963 c 195 s 1; 1949 c 190 s 2; 1947 c 79 s .03.07; Rem. Supp. 1949 s 45.03.07.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 48.03.075 Legal protection for commissioner, authorized representatives, and examiners—Good faith—Attorneys' fees—Payment by commissioner. (1) No cause of action may arise nor may any liability be imposed against the commissioner, the commissioner's authorized representatives, or an examiner appointed by the commissioner for statements made or conduct performed in good faith while carrying out this chapter.

(2) No cause of action may arise nor may 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 chapter, if that act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) This section does not modify a privilege or immunity previously enjoyed by a person identified in subsection (1) of this section.

(4) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other tort arising out of activities in carrying out 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 it had a reasonable basis in law or fact at the time that it was initiated.

(5) If a claim is made or threatened of the sort described in subsection (1) of this section, the commissioner shall provide or pay for the defense of himself or herself, the examiner or representative, and shall pay a judgment or settlement, until it is determined that the person did not act in good faith or did act with fraudulent intent or the intent to deceive.

(6) The immunity, indemnification, and other protections under this section are in addition to those now or hereafter existing under other law. [1993 c 462 s 49.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.