
SENATE BILL 6434

State of Washington

60th Legislature

2008 Regular Session

By Senator Berkey; by request of Insurance Commissioner

Read first time 01/16/08. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to distributing the insurance commissioner's
2 examination reports; and amending RCW 48.03.040 and 48.37.060.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 48.03.040 and 1993 c 462 s 45 are each amended to read
5 as follows:

6 (1) No later than sixty days after completion of each examination,
7 the commissioner shall make a full written report of each examination
8 made by him or her containing only facts ascertained from the accounts,
9 records, and documents examined and from the sworn testimony of
10 individuals, and such conclusions and recommendations as may reasonably
11 be warranted from such facts.

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

15 (3) The commissioner shall furnish a copy of the examination report
16 to the person examined not less than ten days and, unless the time is
17 extended by the commissioner, not more than thirty days prior to the
18 filing of the report for public inspection in the commissioner's
19 office. If such person so requests in writing within such period, the

1 commissioner shall hold a hearing to consider objections of such person
2 to the report as proposed, and shall not so file the report until after
3 such hearing and until after any modifications in the report deemed
4 necessary by the commissioner have been made.

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

10 (a) Adopting the examination report as filed or with modification
11 or corrections. If the examination report reveals that the company is
12 operating in violation of any law, rule, or order of the commissioner,
13 the commissioner may order the company to take any action the
14 commissioner considers necessary and appropriate to cure that
15 violation;

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

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

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

34 (6)(a) Upon the adoption of the examination report under subsection
35 (4) of this section, the commissioner shall continue to hold the
36 content of the examination report as private and confidential
37 information for a period of five days except that the order may be

1 disclosed to the person examined. Thereafter, the commissioner may
2 open the report for public inspection so long as no court of competent
3 jurisdiction has stayed its publication.

4 (b) Nothing in this title prohibits the commissioner from
5 disclosing the content of an examination report, preliminary
6 examination report or results, or any matter relating thereto, to the
7 insurance department of any other state or country, or to law
8 enforcement officials of this or any other state or agency of the
9 federal government at any time, so long as the agency or office
10 receiving the report or matters relating thereto agrees in writing to
11 hold it confidential and in a manner consistent with this chapter.

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

15 (d) Nothing contained in this section requires the commissioner to
16 disclose any information or records that would indicate or show the
17 existence or content of any investigation or activity of a criminal
18 justice agency.

19 **Sec. 2.** RCW 48.37.060 and 2007 c 82 s 8 are each amended to read
20 as follows:

21 (1) When the commissioner determines that other market conduct
22 actions identified in RCW 48.37.040(4)(a) have not sufficiently
23 addressed issues raised concerning company activities in Washington
24 state, the commissioner has the discretion to conduct market conduct
25 examinations in accordance with the NAIC market conduct uniform
26 examination procedures and the NAIC market regulation handbook.

27 (2)(a) In lieu of an examination of an insurer licensed in this
28 state, the commissioner shall accept an examination report of another
29 state, unless the commissioner determines that the other state does not
30 have laws substantially similar to those of this state, or does not
31 have a market oversight system that is comparable to the market conduct
32 oversight system set forth in this law.

33 (b) The commissioner's determination under (a) of this subsection
34 is discretionary with the commissioner and is not subject to appeal.

35 (c) If the insurer to be examined is part of an insurance holding
36 company system, the commissioner may also seek to simultaneously

1 examine any affiliates of the insurer under common control and
2 management which are licensed to write the same lines of business in
3 this state.

4 (3) Before commencement of a market conduct examination, market
5 conduct oversight personnel shall prepare a work plan consisting of the
6 following:

- 7 (a) The name and address of the insurer being examined;
- 8 (b) The name and contact information of the examiner-in-charge;
- 9 (c) The name of all market conduct oversight personnel initially
10 assigned to the market conduct examination;
- 11 (d) The justification for the examination;
- 12 (e) The scope of the examination;
- 13 (f) The date the examination is scheduled to begin;
- 14 (g) Notice of any noninsurance department personnel who will assist
15 in the examination;
- 16 (h) A time estimate for the examination;
- 17 (i) A budget for the examination if the cost of the examination is
18 billed to the insurer; and
- 19 (j) An identification of factors that will be included in the
20 billing if the cost of the examination is billed to the insurer.

21 (4)(a) Within ten days of the receipt of the information contained
22 in subsection (3) of this section, insurers may request the
23 commissioner's discretionary review of any alleged conflict of
24 interest, pursuant to RCW 48.37.090(2), of market conduct oversight
25 personnel and noninsurance department personnel assigned to a market
26 conduct examination. The request for review shall specifically
27 describe the alleged conflict of interest in the proposed assignment of
28 any person to the examination.

29 (b) Within five business days of receiving a request for
30 discretionary review of any alleged conflict of interest in the
31 proposed assignment of any person to a market conduct examination, the
32 commissioner or designee shall notify the insurer of any action
33 regarding the assignment of personnel to a market conduct examination
34 based on the insurer's allegation of conflict of interest.

35 (5) Market conduct examinations shall, to the extent feasible, use
36 desk examinations and data requests before an on-site examination.

37 (6) Market conduct examinations shall be conducted in accordance

1 with the provisions set forth in the NAIC market regulation handbook
2 and the NAIC market conduct uniform examinations procedures, subject to
3 the precedence of the provisions of chapter 82, Laws of 2007.

4 (7) The commissioner shall use the NAIC standard data request.

5 (8) Announcement of the examination shall be sent to the insurer
6 and posted on the NAIC's examination tracking system as soon as
7 possible but in no case later than sixty days before the estimated
8 commencement of the examination, except where the ((exam
9 [examination])) examination is conducted in response to extraordinary
10 circumstances as described in RCW 48.37.050(2)(a). The announcement
11 sent to the insurer shall contain the examination work plan and a
12 request for the insurer to name its examination coordinator.

13 (9) If an examination is expanded significantly beyond the original
14 reasons provided to the insurer in the notice of the examination
15 required by subsection (3) of this section, the commissioner shall
16 provide written notice to the insurer, explaining the expansion and
17 reasons for the expansion. The commissioner shall provide a revised
18 work plan if the expansion results in significant changes to the items
19 presented in the original work plan required by subsection (3) of this
20 section.

21 (10) The commissioner shall conduct a preexamination conference
22 with the insurer examination coordinator and key personnel to clarify
23 expectations at least thirty days before commencement of the
24 examination, unless otherwise agreed by the insurer and the
25 commissioner.

26 (11) Before the conclusion of the field work for market conduct
27 examination, the examiner-in-charge shall review examination findings
28 to date with insurer personnel and schedule an exit conference with the
29 insurer, in accordance with procedures in the NAIC market regulation
30 handbook.

31 (12)(a) No later than sixty days after completion of each market
32 conduct examination, the commissioner shall make a full written report
33 of each market conduct examination containing only facts ascertained
34 from the accounts, records, and documents examined and from the sworn
35 testimony of individuals, and such conclusions and recommendations as
36 may reasonably be warranted from such facts.

37 (b) The report shall be certified by the commissioner or by the

1 examiner-in-charge of the examination, and shall be filed in the
2 commissioner's office subject to (c) of this subsection.

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

13 (d) Within thirty days of the end of the period described in (c) of
14 this subsection, unless extended by order of the commissioner, the
15 commissioner shall consider the report, together with any written
16 submissions or rebuttals and any relevant portions of the examiner's
17 work papers and enter an order:

18 (i) Adopting the market conduct examination report as filed or with
19 modification or corrections. If the market conduct examination report
20 reveals that the company is operating in violation of any law, rule, or
21 order of the commissioner, the commissioner may order the company to
22 take any action the commissioner considers necessary and appropriate to
23 cure that violation;

24 (ii) Rejecting the market conduct examination report with
25 directions to the examiners to reopen the examination for purposes of
26 obtaining additional data, documentation, or information, and refileing
27 under this subsection; or

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

31 (e) All orders entered under (d) of this subsection must be
32 accompanied by findings and conclusions resulting from the
33 commissioner's consideration and review of the market conduct
34 examination report, relevant examiner work papers, and any written
35 submissions or rebuttals. The order is considered a final
36 administrative decision and may be appealed under the administrative
37 procedure act, chapter 34.05 RCW, and must be served upon the company
38 by certified mail or certifiable electronic means, together with a copy

1 of the adopted examination report. A copy of the adopted examination
2 report must be sent by certified mail or certifiable electronic means
3 to each director at the director's residential address or to a personal
4 e-mail account.

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

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

15 (iii) Nothing contained in this subsection requires the
16 commissioner to disclose any information or records that would indicate
17 or show the existence or content of any investigation or activity of a
18 criminal justice agency.

19 (g) The insurer's response shall be included in the commissioner's
20 order adopting the final report as an exhibit to the order. The
21 insurer is not obligated to submit a response.

22 (13) The commissioner may withhold from public inspection any
23 examination or investigation report for so long as he or she deems it
24 advisable.

25 (14)(a) Market conduct examinations within this state of any
26 insurer domiciled or having its home offices in this state, other than
27 a title insurer, made by the commissioner or the commissioner's
28 examiners and employees shall, except as to fees, mileage, and expense
29 incurred as to witnesses, be at the expense of the state.

30 (b) Every other examination, whatsoever, or any part of the market
31 conduct examination of any person domiciled or having its home offices
32 in this state requiring travel and services outside this state, shall
33 be made by the commissioner or by examiners designated by the
34 commissioner and shall be at the expense of the person examined; but a
35 domestic insurer shall not be liable for the compensation of examiners
36 employed by the commissioner for such services outside this state.

37 (c) When making a market conduct examination under this chapter,
38 the commissioner may contract, in accordance with applicable state

1 contracting procedures, for qualified attorneys, appraisers,
2 independent certified public accountants, contract actuaries, and other
3 similar individuals who are independently practicing their professions,
4 even though those persons may from time to time be similarly employed
5 or retained by persons subject to examination under this chapter, as
6 examiners as the commissioner deems necessary for the efficient conduct
7 of a particular examination. The compensation and per diem allowances
8 paid to such contract persons shall be reasonable in the market and
9 time incurred, shall not exceed one hundred twenty-five percent of the
10 compensation and per diem allowances for examiners set forth in the
11 guidelines adopted by the national association of insurance
12 commissioners, unless the commissioner demonstrates that one hundred
13 twenty-five percent is inadequate under the circumstances of the
14 examination, and subject to the provisions of (a) of this subsection.

15 (d)(i) The person examined and liable shall reimburse the state
16 upon presentation of an itemized statement thereof, for the actual
17 travel expenses of the commissioner's examiners, their reasonable
18 living expenses allowance, and their per diem compensation, including
19 salary and the employer's cost of employee benefits, at a reasonable
20 rate approved by the commissioner, incurred on account of the
21 examination. Per diem, salary, and expenses for employees examining
22 insurers domiciled outside the state of Washington shall be established
23 by the commissioner on the basis of the national association of
24 insurance commissioner's recommended salary and expense schedule for
25 zone examiners, or the salary schedule established by the director of
26 the Washington department of personnel and the expense schedule
27 established by the office of financial management, whichever is higher.
28 A domestic title insurer shall pay the examination expense and costs to
29 the commissioner as itemized and billed by the commissioner.

30 (ii) The commissioner or the commissioner's examiners shall not
31 receive or accept any additional emolument on account of any
32 examination.

33 (iii) Market conduct examination fees subject to being reimbursed
34 by an insurer shall be itemized and bills shall be provided to the
35 insurer on a monthly basis for review prior to submission for payment,
36 or as otherwise provided by state law.

37 (e) Nothing contained in this chapter limits the commissioner's
38 authority to terminate or suspend any examination in order to pursue

1 other legal or regulatory action under the insurance laws of this
2 state. Findings of fact and conclusions made pursuant to any
3 examination are prima facie evidence in any legal or regulatory action.

4 (f) The commissioner shall maintain active management and oversight
5 of market conduct examination costs, including costs associated with
6 the commissioner's own examiners, and with retaining qualified contract
7 examiners necessary to perform an examination. Any agreement with a
8 contract examiner shall:

9 (i) Clearly identify the types of functions to be subject to
10 outsourcing;

11 (ii) Provide specific timelines for completion of the outsourced
12 review;

13 (iii) Require disclosure to the insurer of contract examiners'
14 recommendations;

15 (iv) Establish and use a dispute resolution or arbitration
16 mechanism to resolve conflicts with insurers regarding examination
17 fees; and

18 (v) Require disclosure of the terms of the contracts with the
19 outside consultants that will be used, specifically the fees and/or
20 hourly rates that can be charged.

21 (g) The commissioner, or the commissioner's designee, shall review
22 and affirmatively endorse detailed billings from the qualified contract
23 examiner before the detailed billings are sent to the insurer.

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