

CHAPTER 39--H.F.No. 1732

An act relating to insurance; examinations by the commissioner of commerce; amending Minnesota Statutes 2016, section 60A.031, subdivisions 4, 6; proposing coding for new law in Minnesota Statutes, chapter 60A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2016, section 60A.031, subdivision 4, is amended to read:

Subd. 4. **Examination report; foreign and domestic companies.** (a) The commissioner shall make a full and true report of every examination conducted pursuant to this chapter, which shall include (1) a statement of findings of fact relating to the financial status and other matters ascertained from the books, papers, records, documents, and other evidence obtained by investigation and examination or ascertained from the testimony of officers, agents, or other persons examined under oath concerning the business, affairs, assets, obligations, ability to fulfill obligations, and compliance with all the provisions of the law of the company, applicant, organization, or person subject to this chapter and (2) a summary of important points noted in the report, conclusions, recommendations and suggestions as may reasonably be warranted from the facts so ascertained in the examinations. The report of examination shall be verified by the oath of the examiner in charge thereof, and shall be prima facie evidence in any action or proceedings in the name of the state against the company, applicant, organization, or person upon the facts stated therein.

(b) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which provides the company examined with a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to matters contained in the examination report.

(c) 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 the written submissions or rebuttals and the relevant portions of the examiner's work papers and enter an order:

(1) 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 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;

(2) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile the report as required under paragraph (b); or

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

(d)(1) All orders entered under paragraph (c), clause (1), must 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. The order is a final administrative decision and may be appealed as provided under chapter 14. The order must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) A hearing conducted under paragraph (c), clause (3), by the commissioner or authorized representative, must be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant work papers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order as required under paragraph (c), clause (1).

(3) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously. Discovery by the company is limited to the examiner's work papers which tend to substantiate assertions in a written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced must be included in the record. Testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record.

This section does not require the department to disclose information or records which would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

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

(e)(1) Upon the adoption of the examination report under paragraph (c), clause (1), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days except as otherwise provided in paragraph (b). Thereafter, the commissioner may open the report for public inspection if a court of competent jurisdiction has not stayed its publication.

(2) Nothing contained in this subdivision prevents or shall be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the reports, to the Commerce Department or the insurance department of another state or country, or to law enforcement officials of this or another state or agency of the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this subdivision.

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

(f) 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 under this subdivision, or in the course of market analysis, must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in paragraph (e). Access may also be granted to the National Association of Insurance Commissioners (NAIC), the Financial Industry Regulatory Authority, and any national securities association registered under the Securities Exchange Act of 1934. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained. For purposes of this section, "market analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, such as the NAIC Market Conduct Annual Statement, or other sources in order to develop a baseline profile of an insurer, to review the operation or activity of an insurer, or to identify patterns or practices of insurers licensed to do business in this state that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

(g) Information in the possession or control of, or obtained or disclosed to, the commissioner in the course of, or derived from, market analysis, as defined in paragraph (f), by an insurance company is:

(1) subject to confidential treatment as provided under paragraph (f); and

(2) not subject to subpoena or other discovery nor admissible in evidence in a private civil action. Neither the commissioner nor any person who received information while acting under the authority of the commissioner is permitted or required to testify in a private civil action concerning the information. Nothing in this paragraph limits the ability of the commissioner to use the information in furtherance of an action brought by the commissioner.

(h) Requests for information issued by the commissioner to an insurance company in the course of a market analysis, as defined in paragraph (f), must be issued under the commissioner's authority as provided in this section.

(i) Notwithstanding paragraph (h), the commissioner may request information from an insurance company pursuant to the commissioner's authority under section 45.027, subdivision 1a or 2, if:

(1) the request for information is in connection with an unresolved consumer complaint; or

(2) there is an imminent risk of significant harm to a consumer.

(j) Requests for information from the commissioner to an insurance company under paragraph (i) are not subject to section 60A.033.

Sec. 2. Minnesota Statutes 2016, section 60A.031, subdivision 6, is amended to read:

Subd. 6. **Penalty.** Notwithstanding section 72A.05, any person who violates or aids and abets any violation of a written order issued pursuant to this section may be fined not more than \$10,000 for each day the violation continues for each violation of the order ~~in an action commenced in Ramsey County by the attorney general on behalf of the state of Minnesota~~ and the money so recovered shall be paid into the general fund.

Sec. 3. **[60A.033] SCHEDULING CONFERENCE AND ORDER.**

Subdivision 1. **Scope.** This section applies to examinations limited to market analysis, as defined in section 60A.031, subdivision 4, paragraph (f).

Subd. 2. **Scheduling conference required.** Within 30 days of issuing an examination order under section 60A.031, the commissioner must hold a scheduling conference with the insurance company.

Subd. 3. **Exception.** A scheduling conference and order is not required under this section if the insurance company waives its right to a scheduling conference and order.

Subd. 4. **Scheduling conference.** At the scheduling conference, the commissioner must provide the insurance company with the following:

(1) the justification for the examination and the regulatory issues the examination will address;

(2) the information that must be produced by the insurance company and the timing for its production in accordance with the requirements of subdivision 6;

(3) the estimated length of the examination, subject to the requirements of subdivision 9;

(4) whether contract examiners will be used;

(5) a budget for the exam including:

- (i) the daily or hourly rates for the examiners that will be involved in the examination;
- (ii) the estimated travel, lodging, meal, and other expenses of the examiners; and
- (iii) the estimated administrative and supply costs directly associated with the examination; and
- (6) an explanation of the invoicing process and the process for resolving billing disputes.

Subd. 5. **Scheduling order.** Within 15 days following the scheduling conference or as otherwise agreed to by the commissioner and the insurance company, the commissioner must issue a scheduling order that includes the information required by subdivision 4, based on the discussion at the scheduling conference. The commissioner and insurance company must follow the terms of the scheduling order. To amend a scheduling order there must be a supplemental scheduling conference that complies with subdivision 4 and a supplemental scheduling order that complies with this subdivision, unless otherwise agreed upon by the commissioner and the insurance company.

Subd. 6. **Production of information.** (a) Any information requested from an insurance company by the commissioner must:

- (1) be limited to matters relevant to the issues the examination will address;
- (2) provide the insurance company with a reasonable period of time to respond to the request, but not less than 30 days from the receipt of the request; and
- (3) be reasonable in relation to the burden or expense of gathering the requested information and the needs of the examination.

(b) In making an information request, the commissioner must consider whether the information being requested is obtainable from some other source that is more convenient, less burdensome, or less expensive for the insurance company.

(c) An insurance company can extend the time period by which a response to an information request from the commissioner is due by up to 30 days upon giving notice of the extension to the commissioner. The commissioner may extend any time period by which information is due relating to an examination.

Subd. 7. **Conduct of an examination.** (a) Unless required to preserve evidence, the commissioner, department, and examiners:

- (1) may not appear at an insurance company's place of business unannounced to conduct the examination;
- or
- (2) may not be present at an insurance company's place of business outside of normal hours without the insurance company's written consent.

(b) If a statement is taken by the commissioner from a person under oath, the person must first be informed of the following:

- (1) the scope of the proposed statement;
- (2) whether the person is the subject of an examination; and
- (3) that the person may be represented by legal counsel during the taking of the statement.

(c) If a statement is taken by the commissioner from a person under oath and the statement is recorded, the person must be provided with a transcript or recording of the statement within 30 days of requesting it from the commissioner.

Subd. 8. **Costs.** All bills for examination costs being charged to an insurance company pursuant to subdivision 5 or section 60A.031, subdivision 3, paragraph (c), must:

(1) be itemized and, with respect to examiner billings, contain activity detail on a quarterly hourly basis by an individual examiner and disclose the applicable hourly billing rates, together with per-charge detail for related travel or other expenses; and

(2) provide a due date no less than 30 days from receipt of the bill.

Subd. 9. **Completion of examination.** An examination under section 60A.031 must not exceed 18 months from the date the commissioner receives the insurance company's first submission pursuant to a scheduling order, unless:

(1) the commissioner determines that there has been a material lack of cooperation by the insurance company;

(2) the examination is a multistate examination; or

(3) the commissioner determines that additional time is necessary to complete the examination and the commissioner notifies the insurance company in writing of the reasons why the examination requires additional time.

Subd. 10. **Hearing; procedure; judicial review.** (a) An insurance company aggrieved by any decision or action of the commissioner under this section as it relates to market analysis may, within 21 days after that decision or action, make a written request to the commissioner for a hearing to determine whether the decision or action complies with the requirements of this section. The commissioner shall hear the party or parties within 21 days after receipt of the request and shall give not less than ten days' written notice of the time and place of the hearing. Within 15 days after the hearing, the commissioner shall affirm, reverse, or modify the previous action and specify the reasons for that decision or action in writing. The effective date of the commissioner's action or decision may be suspended or postponed pending the completion of the hearing before the commissioner.

(b) Nothing contained in this section requires the observance at any hearing of formal rules of pleading or evidence.

(c) An order or decision of the commissioner is a final decision subject to appeal in accordance with chapter 14.

(d) Time used to complete a hearing and appeal under this section must not be counted toward the time frame for completion of an examination under subdivision 9.

Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective August 1, 2017, and apply to examinations and investigations initiated on or after that date.

Presented to the governor May 9, 2017

Signed by the governor May 11, 2017, 10:49 a.m.