

## **CHAPTER 26.1-03 EXAMINATIONS, REPORTS, AND TAX**

### **26.1-03-01. Limitation on risks acceptable by company.**

An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured. An insurance company offering group or individual insurance that is subject to the lifetime or annual benefit limit restrictions of the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], is not subject to this section.

### **26.1-03-02. Valuation of securities held by company.**

Repealed by S.L. 1993, ch. 292, § 49.

#### **26.1-03-02.1. Valuation of securities and other investments.**

1. All securities and investments of insurance companies must be valued in accordance with published valuation standards of the national association of insurance commissioners including the accounting practices and procedure manuals and publications by the valuation of securities office of the national association of insurance commissioners.
2. All investments of insurance companies authorized to do business in this state, for which no method of valuation has been otherwise provided, must be valued in the discretion of the commissioner at their fair market value, appraised value, or at amounts determined by the commissioner as their fair market value. If any valuation of an investment by an insurer appears to be an unreasonable estimate of its true value, the commissioner has the authority to cause the investment to be appraised, and the appraised value must be substituted as the true value. The appraisal must be made by two disinterested and competent persons, one to be appointed by the commissioner and one to be appointed by the insurer. In the event these two persons fail to agree, they shall appoint a third disinterested and competent person, and the estimate of the value of the investment, as arrived at by these three persons, must be substituted as the true value.

### **26.1-03-03. Cooperative and assessment life associations - Valuation of policies.**

Cooperative or assessment life associations must be admitted to transact business in this state upon compliance with the provisions of this title relating to the licensing and admission of life insurance companies without being required to value their policies in conformity with chapter 26.1-35. These associations shall value their policies in the same manner as yearly renewable term policies are valued, according to the standard of valuation of life insurance policies prescribed by this title.

### **26.1-03-04. Assets required of cooperative and assessment life associations.**

Every cooperative or assessment life association authorized to do business in this state shall accumulate and maintain assets in excess of actual liabilities for death losses sustained and expenses incurred equal to two percent of all insurance which the association has in force. The assets must be cash, money on deposit in banks, and securities eligible for investment by insurance companies under this title.

### **26.1-03-05. Surplus of life insurance company doing business on mutual plan apportioned annually.**

Every life insurance company conducted on the mutual plan, or upon any other plan in which the policyholders are entitled to share in the profits or surplus of the company, doing business in this state shall make an annual apportionment and accounting of divisible surplus to each policyholder beginning not later than the end of the third policy year. Each policyholder is

entitled to, and must be credited with or paid in the manner provided in this chapter, the portion of the entire divisible surplus as has been contributed thereto by the policyholder's policy. Every life insurance company, upon policies other than industrial policies, issued before July 1, 1907, under the conditions of which the distribution of surplus was deferred to a fixed or specified time and made contingent upon the policy being in force and the insured living at that time, shall ascertain annually the amount of surplus to which all of the policies as a separate class are entitled, and shall apportion to the policies as a class the amount of surplus so ascertained and must carry the amount of the apportioned surplus, and the actual interest earnings and accretions of the fund, as a distinct and separate liability to the class of policies on and for which the same was accumulated. Neither the company nor any of its officers may use any part of the apportioned surplus for any purpose whatsoever other than for the express purpose for which the apportioned surplus was accumulated.

**26.1-03-06. Life insurance company may maintain contingency reserve - Limitations.**

Any life insurance company doing business in this state may accumulate and maintain, in addition to the capital and surplus contributed by its stockholders and in addition to an amount equal to the net values of its policies computed according to the laws of the jurisdiction under which it is organized, a contingency reserve not exceeding the following respective percentages of the net values:

1. When the net values are less than one hundred thousand dollars, twenty percent thereof or the sum of ten thousand dollars, whichever is the greater.
2. When the net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve decreases one-half of one percent for each one hundred thousand dollars of the net values up to one million dollars and may include one-half of one percent for each additional one million dollars up to ten million dollars.
3. If the net values equal or exceed the last mentioned amount, the contingency reserve may not exceed ten percent thereof.

As the net values of the policies increase and the maximum percentage measuring the contingency reserve decreases, the company may maintain the contingency reserve already accumulated, although for the time being, it may exceed the maximum percentage herein prescribed. The company, however, may not add to the contingency reserve when the addition will bring it beyond the maximum percentage prescribed in this section. For cause shown, the commissioner may permit a company to accumulate and maintain a contingency reserve in excess of the limit specified in this section for a prescribed period, not exceeding one year under any one permission, by filing in the commissioner's office a decision stating the reasons therefor and causing the same to be published in the commissioner's next annual report. This section does not apply to any company doing exclusively a nonparticipating business.

**26.1-03-07. Annual statement to be filed.**

Every insurance company doing business in this state shall transmit to the commissioner, not later than March first of each year, a statement of its condition and business for the year ending on the preceding December thirty-first. If March first falls on a Saturday or legal holiday, the statement is due on the next succeeding business day. A company organized under the law of any foreign country or province shall include in the statement only business transacted within the United States, and shall file a supplemental statement of business transacted without the United States not later than December first. The commissioner shall stamp the date of receipt on every statement. The commissioner may not accept the annual statement from any company if the statement was transmitted after the date designated in this section unless the statement is accompanied by the penalty prescribed by section 26.1-03-16. The commissioner may designate the national association of insurance commissioners as the repository for the filing.

**26.1-03-08. Statements of receiver of company.**

A receiver of an insurance company doing business in this state, on or before June thirtieth of each year, and at any other time, when required to do so by the commissioner, shall make

and file a statement of the assets and liabilities of the company and of the income and expenditures during the receivership in the same manner and form as is required by this chapter from the officers of insurance companies. A receiver is subject to the same penalty for the failure or refusal to make and file the statement.

**26.1-03-09. Statements to be verified by specified officers - Duty of commissioner to distribute information.**

The annual statement must be verified by the signature and oath of the president or the vice president and of the secretary, the actuary, if a life insurance company, and the treasurer or corresponding person having charge of the accounts and finances of the insurance company, or by a majority of the members of the board of directors of the company. The commissioner shall arrange the information in the statements in a tabular form and annually print and distribute the information to the companies doing business in this state and to the legislative assembly.

**26.1-03-10. Publication of abstract of annual statement and certificate of authority.**

An insurance company, at the time it submits its annual statement for filing, shall submit an abstract of the annual statement for publication upon the form prescribed by the commissioner. The abstract of the annual statement of each company, other than a state or county mutual insurance company, must be published at least three times in one newspaper of general circulation, designated by the commissioner, printed and published in each judicial district in this state in which the company has an agency. The abstract of the annual statement of each state or county mutual insurance company must be published once in a newspaper published in the county in which the company has its principal place of business, the newspaper to be designated by the members of the company at their annual meeting. The certificate of authority issued by the commissioner to authorize the company to do business within this state must be published in connection with the publication of the abstract of its annual statement. The fees for publication are those provided under section 46-05-03. Proof of publication must be filed with the commissioner within four months after the filing of the annual statement.

**26.1-03-11. Fire companies to report statistical data - Failure to report - Exceptions to reporting requirements.**

Each insurance company issuing fire insurance policies covering property in this state shall annually report information setting forth the amount of earned premiums in this state for policies covering insured property located in this state and the amount of claims incurred. This information is not to include personal lines or farm property insurance. This information must be reported on a form prescribed by the commissioner. The company shall file the form with the commissioner or shall certify to the commissioner that the information has been reported directly to an advisory organization upon whose filings the majority of the fire insurance rates for North Dakota are based. The form or certification must accompany the annual statement required under section 26.1-03-07. The commissioner shall forward information filed under this section to the advisory organization upon whose filings a majority of the fire insurance rates for North Dakota are based. Each advisory organization filing pursuant to chapter 26.1-25 shall use this information in its filing. The commissioner shall revoke the certificate of authority of an insurance company failing to file the information required by this section.

**26.1-03-11.1. Insurance company annual statements - Filed with national association of insurance commissioners.**

1. Every domestic, foreign, and alien insurance company in this state shall transmit to the national association of insurance commissioners, not later than March first of each year, a copy of its annual statement, along with any additional filings as described by the commissioner for the preceding year. The information filed with the national association of insurance commissioners must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement filing subsequently filed with the commissioner must also be filed with the national

association of insurance commissioners. The insurance commissioner may exempt any domestic company or category or class of domestic companies from the filing requirement.

2. Foreign insurance companies domiciled in a state which has a law substantially similar to subsection 1 are deemed to be in compliance with this section.
3.
  - a. Documents, materials, or other information in the possession or control of the commissioner which are an actuarial report, workpapers, or actuarial opinion summary provided in support of the actuarial certification commonly known as the statement of actuarial opinion, and any other material provided by the insurance company to the commissioner in connection with the actuarial report, workpapers, or actuarial opinion summary, is confidential and privileged and is not subject to section 44-04-18. This subsection may not be construed to limit the authority to subpoena or otherwise discover the documents, materials, or other information or to limit use of the documents, materials, or other information in criminal investigations or proceedings.
  - b. This subsection may not be construed to limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and the actuarial board for counseling and discipline establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents. This section may not be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
  - c. This subsection does not apply to actuarial opinions required under chapter 26.1-35.

**26.1-03-11.2. Immunity of national association of insurance commissioners' employees.**

In the absence of actual malice, members of the national association of insurance commissioners and their employees and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement act as agents of the commissioner under the authority of sections 26.1-03-11.1 through 26.1-03-11.3 and are not subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required by sections 26.1-03-11.1 through 26.1-03-11.3.

**26.1-03-11.3. Confidentiality.**

The commissioner shall maintain, as confidential, any confidential documents or information received from the national association of insurance commissioners or state, federal, or international regulatory or law enforcement officials of this state and other states or jurisdictions. The information may not be disclosed by the department and is exempt from section 44-04-18. The commissioner may share information that is confidential under the laws of this state with the national association of insurance commissioners and with state, federal, or international regulatory or law enforcement officials from this state and other states or jurisdictions providing that the officials are required, under their law, to maintain its confidentiality.

**26.1-03-12. Definition of product liability insurance.**

Repealed by S.L. 2003, ch. 245, § 4.

**26.1-03-13. Reporting of product liability information.**

Repealed by S.L. 2003, ch. 245, § 4.

**26.1-03-14. Confidentiality of product liability information reports.**

Repealed by S.L. 2003, ch. 245, § 4.

**26.1-03-15. Limitation of liability.**

Repealed by S.L. 2003, ch. 245, § 4.

**26.1-03-16. Penalty for not making statement.**

Any insurance company doing business in this state which neglects to make and file any statement in the manner and within the time prescribed in this chapter forfeits one hundred dollars for each day's neglect, and upon notice by the commissioner to that effect, its authority to do new business ceases during the default. Any new business done by an insurance company after it has neglected to make a required statement is in violation of law. The commissioner may grant an insurance company an extension beyond the date designated in this section and may waive or reduce any penalty during the extension, upon a showing of good cause by the insurance company.

**26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax. (Effective through December 31, 2021)**

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 and chapter 23-46 in any fiscal year. Collections from this tax exceeding the sum of the amount deposited in the insurance tax distribution fund must be deposited in the general fund in the state treasury.
2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 3 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit against the tax due for the amount of any assessment paid as a member of the reinsurance association of North Dakota under section 26.1-36.7-06 for which the member may be liable for the year in which the assessment is paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and 26.1-18.1-18, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.
3. Any company failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of one hundred dollars plus twenty-five dollars per day, excepting the first day after the tax became due. Any company failing to file the appropriate tax statement required by rule if the tax is zero is subject to a penalty of twenty-five dollars per day for each day's neglect not to exceed five hundred dollars.

The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.

4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit or benevolent societies, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment must be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of the total tax paid during the previous calendar year, or eighty percent of the actual tax for the quarter being reported of the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, a refund may be issued to the taxpayer who made the erroneous payment. The refund is allowed as a credit against any tax due or to become due under this section or as a cash refund, at the discretion of the commissioner. The taxpayer who made the erroneous payment shall present a claim for refund to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.
6. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5. Failure of a company to pay the two hundred dollar filing fee subjects the company to the penalty as provided in subsection 3.

**26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax. (Effective after December 31, 2021)**

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit and benevolent societies, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 and chapter 23-46 in any fiscal year. Collections from this tax exceeding the sum of the amount deposited in the insurance tax distribution fund must be deposited in the general fund in the state treasury.
2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 3 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and 26.1-18.1-18, and a credit against the tax due for an amount equal to

the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

3. Any company failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of one hundred dollars plus twenty-five dollars per day, excepting the first day after the tax became due. Any company failing to file the appropriate tax statement required by rule if the tax is zero is subject to a penalty of twenty-five dollars per day for each day's neglect not to exceed five hundred dollars. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.
4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except fraternal benefit or benevolent societies, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment must be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of the total tax paid during the previous calendar year, or eighty percent of the actual tax for the quarter being reported of the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, a refund may be issued to the taxpayer who made the erroneous payment. The refund is allowed as a credit against any tax due or to become due under this section or as a cash refund, at the discretion of the commissioner. The taxpayer who made the erroneous payment shall present a claim for refund to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.
6. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5. Failure of a company to pay the two hundred dollar filing fee subjects the company to the penalty as provided in subsection 3.

**26.1-03-18. Insurance or surety company to file statement of business done before authorization and to pay tax.**

Before a surety company or an insurance company, other than a life insurance company, may be authorized to transact business in this state, the commissioner may require it to file with the commissioner a sworn statement and other proof that it has not written, or caused to be written, any surety bond or insurance contract on any person, firm, or corporation, or on property in this state, at any time prior to filing its application for a certificate of authority to do business in this state. If it appears that the company has written, or caused to be written, any such surety bond or insurance contract while it was not authorized to do business in this state, it shall file a statement of all such bonds and contracts written by it, and the company shall pay the premium tax due thereon before a certificate of authority is issued to it.

**26.1-03-19. Examination of companies - Times - Expense.**

Repealed by S.L. 1993, ch. 292, § 49.

**26.1-03-19.1. Examination of companies - Definitions.**

In sections 26.1-03-19.1 through 26.1-03-19.7, unless the context otherwise requires:

1. "Company" means any foreign or domestic insurance company as defined in section 26.1-02-01.

2. "Examiner" means any individual or firm having been authorized by the commissioner to conduct an examination under this chapter.
3. "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any affiliate thereof.

**26.1-03-19.2. 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 whenever the commissioner in the commissioner's sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider the 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' financial condition and market conduct 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 under 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 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, the reports may only be accepted if the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program, or the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department, or the commissioner finds that the examination was performed by the insurance department of a state that was previously accredited under the national association of insurance commissioners but has lost its accreditation, provided that state's consumer protection laws are no less protective than those present under North Dakota law.

**26.1-03-19.3. Conduct of examinations.**

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue a letter appointing one or more examiners to perform the examination and instructing 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 or procedures as the commissioner may deem appropriate.
2. For the purposes of making any examination required or authorized by law, every company or person from whom information is sought, its officers, directors, trustees, and agents must provide to the examiners appointed under subsection 1, in any examination required or authorized by law, 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, trustees, and agents of the company or person must 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, trustees, or agents to submit to examination or to



comply with any reasonable request of the examiners is grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority must be conducted pursuant to sections 26.1-01-03.1 and 26.1-11-09.

3. The commissioner or any of the commissioner's examiners have the power to issue subpoenas, to administer oaths, and to 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. Qualified regular employees of the commissioner, or the commissioner's designated representatives acting as independent contract examiners under the direction of regular employees of the commissioner, shall conduct all examinations of an insurance company required or permitted by law to be conducted by the commissioner, whether or not the examinations are convention examinations called in accordance with rules promulgated by the national association of insurance commissioners. The commissioner may contract for and procure the services of financial and market conduct examiners and other or additional specialized technical or professional assistants, as independent contractors. None of the persons providing those services or assistance on a contract or fee basis may be in the classified service of the state.
5. Nothing contained in this chapter may be construed to 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 will be prima facie evidence in any legal or regulatory action by and before the insurance commissioner.
6. Except as provided in subsections 5 and 6 of section 26.1-03-19.4, nothing contained in this chapter may be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

#### **26.1-03-19.4. Examination reports.**

1. All examination reports must be comprised of only 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 the conclusions and recommendations as the examiners find reasonably warranted from the facts.
2. No later than sixty 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 must 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. Within thirty 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 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, regulation, 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. Rejecting 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; 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.
- 4.
- a. All orders entered pursuant to subdivision a of subsection 3, except those entered pursuant to section 26.1-01-03.1 or 26.1-11-09, 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. The company may, within thirty days of the entry of any such order, request a hearing to vacate or amend the order. This hearing must be conducted in compliance with chapter 28-32. The order must be served upon the company, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall acknowledge receipt of the adopted report and related orders.
  - b. Any hearing conducted under subdivision c of subsection 3 by the commissioner or authorized representative must 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 raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to subdivision a of subsection 3.
- 5.
- a. Upon the adoption of a financial examination report under subdivision a of subsection 3, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of fifteen days except to the extent provided in subsection 2. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.
  - b. Nothing contained in this code prevents or may be construed as prohibiting 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 this or 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. In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.
- 6.
- a. 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 a financial examination made under this chapter 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 subsection 5. Access may also be granted to the national association of insurance commissioners. 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.
  - b. For purposes of any other examination other than financial examinations required or authorized by law, all preliminary data, drafts, notes, impressions, memoranda, working papers, and work product generated by the commissioner or the person making an examination or inspection are confidential and not open for public inspection until the commissioner releases a final report concerning the examination or inspection or upon a declaration by the commissioner that the

material is nonconfidential. If a declaration of nonconfidentiality is requested by any person and denied, the commissioner, in the denial, shall state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when it will be made public.

**26.1-03-19.5. Conflict of interest.**

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 any person subject to examination under this chapter. This section must not be construed to automatically preclude an examiner from being:

1. A policyholder or claimant under an insurance policy.
2. 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.
3. An investment owner in shares of regulated diversified investment companies.
4. A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

Notwithstanding the requirements 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 said persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

**26.1-03-19.6. Cost of examinations.**

For purposes of any examination authorized or required by law, the company being examined shall pay the same charge for the examination as is provided in section 26.1-01-07 for an official examination. The compensation to be paid to the employees of the commissioner is to be paid out of the appropriation for the commissioner's office. Any sum paid to the employees or to the commissioner by the company examined, as an examination fee or otherwise, is state money, and forthwith must be paid into the insurance regulatory trust fund. Any sum paid to the employee or the commissioner as expense money for the examiner may be paid directly to the employee, and no employee may charge or collect from the state any expenses incurred in connection with any examination for or during which expenses or any part thereof have been paid by any other person, firm, or corporation. However, the compensation and expenses paid for independent contract examiners must be paid directly by the company examined after approval by the commissioner.

**26.1-03-19.7. Immunity from liability.**

1. No cause of action arises, nor may any liability be imposed, against the commissioner, the commissioner's authorized representatives, 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. No cause of action arises, 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 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 heretofore 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 that 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 it had a reasonable basis in law or fact at the time that it was initiated.

**26.1-03-20. Examinations - By whom conducted - Compensation to be paid into insurance regulatory trust fund.**

Repealed by S.L. 1993, ch. 292, § 49.

**26.1-03-21. Powers of commissioner or person making an examination.**

Repealed by S.L. 1993, ch. 292, § 49.

**26.1-03-22. State auditor to make examination when commissioner is disqualified.**

If the commissioner is a director, officer, agent, attorney, or stockholder of, or is interested directly in, any insurance company except as an insured, the state auditor or a person appointed by the state auditor shall examine the company. No officer or agent of any insurance company doing business in this state may be appointed to examine the affairs of the company.