

CHAPTER 26.1-06.2 ADMINISTRATIVE SUPERVISION

26.1-06.2-01. Definitions.

As used in this chapter:

1. "Consent" means agreement to administrative supervision by the insurer.
2. "Exceeded its powers" means any of the following conditions:
 - a. The insurer has refused to permit examination of its books, papers, accounts, records, or affairs by the commissioner, the commissioner's deputies, employees, or duly commissioned examiners.
 - b. A domestic insurer has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer.
 - c. The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto.
 - d. The insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus.
 - e. The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner.
 - f. The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner, if approval is required by law, totally reinsured its entire outstanding business, or merged or consolidated substantially its entire property or business with another insurer.
 - g. The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state.
 - h. The insurer refused to comply with a lawful order of the commissioner.
3. "Insurer" means and includes every person engaged as indemnity, surety, or contractor in the business of insurance or of annuities. For purposes of this chapter, any other persons included under section 26.1-06.1-02 must be deemed to be insurers.

26.1-06.2-02. Scope.

The provisions of this chapter apply to:

1. All domestic insurers.
2. Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of this chapter as regards such insurer.

26.1-06.2-03. Notice to comply with written requirements of commissioner - Noncompliance - Administrative supervision.

1. An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:
 - a. The insurer's condition renders the continuance of its business hazardous to the public or to its insureds.
 - b. The insurer appears to have exceeded its powers granted under its certificate of authority and applicable law.
 - c. The insurer has failed to comply with the applicable provisions of this title.
 - d. The business of the insurer is being conducted fraudulently.
 - e. The insurer gives its consent.
2. If the commissioner determines that the conditions set forth in subsection 1 exist, the commissioner shall:
 - a. Notify the insurer of the commissioner's determination.
 - b. Furnish to the insurer a written list of the requirements to abate this determination.

- c. Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of the chapter. The action by the commissioner is subject to review pursuant to chapter 28-32.
3. If placed under administrative supervision, the insurer has sixty days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this chapter.
4. If it is determined after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may extend the supervision period.
5. If it is determined that none of the conditions giving rise to the supervision exist, the commissioner shall release the insurer from supervision.

26.1-06.2-04. Confidentiality of certain proceedings and records.

1. Notwithstanding any other provision of law and except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the commissioner or the department relating to the supervision of any insurer are confidential.
2. The personnel of the department shall have access to these proceedings, hearings, notices, correspondence, reports, records, or information as permitted by the commissioner.
3. The commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records, or information to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.
4. The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors, or the general public.
5. This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

26.1-06.2-05. Prohibited acts during supervision.

During the period of supervision, the commissioner or the commissioner's designated appointee shall serve as the administrative supervisor. The commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the commissioner's appointed supervisor:

1. Dispose of, convey, or encumber any of its assets or its business in force.
2. Withdraw any of its bank accounts.
3. Lend any of its funds.
4. Invest any of its funds.
5. Transfer any of its property.
6. Incur any debt, obligation, or liability.
7. Merge or consolidate with another company.
8. Approve new premiums or renew any policies.
9. Enter into any new reinsurance contract or treaty.
10. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract, except for nonpayment of premiums due.
11. Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate, or contract.
12. Make any material change in management.
13. Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential.

26.1-06.2-06. Review and stay of action.

During the period of supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under chapter 28-32.

26.1-06.2-07. Administrative election of proceedings.

Nothing contained in this chapter precludes the commissioner from initiating judicial proceedings to place an insurer in conservation, rehabilitation, or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this chapter against the insurer.

26.1-06.2-08. Rules.

The commissioner may adopt reasonable rules necessary for the implementation of this chapter.

26.1-06.2-09. Other laws - Conflicts - Meetings between the commissioner and the supervisor.

Notwithstanding any other provision of law, the commissioner may meet with a supervisor appointed under this chapter and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this chapter to carry out the commissioner's duties under this chapter or for the supervisor to carry out the duties under this chapter.

26.1-06.2-10. Immunity.

There is no liability on the part of, and no cause of action of any nature may arise against, the commissioner or the department or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter.