

§6807. Examinations and investigations**1. Complaint.**

[PL 2003, c. 636, §10 (RP).]

1-A. Examinations. The superintendent may conduct examinations in accordance with this subsection.

A. The superintendent may conduct an examination under this chapter of a licensee as often as the superintendent in the superintendent's sole discretion considers appropriate. [PL 2003, c. 636, §10 (NEW).]

B. For purposes of completing an examination of a licensee under this chapter, subject to the provisions of section 6806, the superintendent 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 superintendent, considered necessary or material to the examination of the licensee. [PL 2003, c. 636, §10 (NEW).]

C. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this State, the superintendent may, at the superintendent's discretion, accept an examination report on the licensee as prepared by the superintendent of insurance for the licensee's state of domicile or port-of-entry state. [PL 2003, c. 636, §10 (NEW).]

[PL 2003, c. 636, §10 (NEW).]

2. Confidential information.

[PL 2003, c. 636, §10 (RP).]

3. Records. Records of all settlement transactions must be maintained by the settlement provider licensee in accordance with this subsection.

A. A settlement provider required to be licensed by this chapter shall retain for 5 years copies of all:

- (1) Proposed, offered or executed settlement contracts, settlement purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the settlement contract or settlement purchase agreement, whichever is later;
- (2) Checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and
- (3) Other records and documents related to the requirements of this chapter. [PL 2003, c. 636, §10 (NEW).]

B. This subsection does not relieve a settlement provider licensee of the obligation to produce these documents to the superintendent after the retention period has expired if the person has retained the documents. [PL 2003, c. 636, §10 (NEW).]

C. Subject to the provisions of section 6806, records required to be retained by this subsection must be legible and complete and may be retained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record. [PL 2003, c. 636, §10 (NEW).]

[PL 2003, c. 636, §10 (AMD).]

4. Immunity. A cause of action may not arise against any person for the act of communicating or delivering information or data to the superintendent or the superintendent'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. This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore

enjoyed by the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent.

A. A cause of action may not arise against the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of this chapter. [PL 2003, c. 636, §10 (NEW).]

B. A cause of action may not arise against any person for the act of communicating or delivering information or data to the superintendent or the superintendent'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. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph A. [PL 2003, c. 636, §10 (NEW).]

C. A person identified in paragraph A or B 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 paragraph, a proceeding is "substantially justified" if the proceeding had a reasonable basis in law or fact at the time that it was initiated. [PL 2003, c. 636, §10 (NEW).]

[PL 2003, c. 636, §10 (AMD).]

5. Conduct of examinations. The following provisions govern the conduct of examinations.

A. Upon determining that an examination should be conducted, the superintendent shall issue an examination warrant 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 as the superintendent considers appropriate. [PL 2003, c. 636, §10 (NEW).]

B. Every licensee or person from whom information is sought and its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee or person being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination insofar as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the superintendent is grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the licensee to engage in the business of settlements or other business subject to the superintendent's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority must be conducted pursuant to Title 5, chapter 375, subchapter 4. [PL 2003, c. 636, §10 (NEW).]

C. The superintendent has 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 a person to obey a subpoena, the superintendent 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. [PL 2003, c. 636, §10 (NEW).]

D. When making an examination under this chapter, the superintendent may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, the reasonable cost of which must be borne by the licensee that is the subject of the examination. [PL 2003, c. 636, §10 (NEW).]

E. This chapter may not be construed to limit the superintendent's authority to terminate or suspend an 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 are prima facie evidence in any legal or regulatory action. [PL 2003, c. 636, §10 (NEW).]

F. This chapter may not be construed to limit the superintendent's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee 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 that the superintendent may, in the superintendent's sole discretion, consider appropriate. [PL 2003, c. 636, §10 (NEW).]
[PL 2003, c. 636, §10 (NEW).]

6. Examination reports. Examination reports may be composed only of facts appearing upon the books, records or other documents of the licensee or 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 of such conclusions and recommendations as the examiners find reasonably warranted from the facts. No later than 60 days following completion of the examination, the examiner in charge shall file under oath with the superintendent a verified written report of examination. Upon receipt of the verified report, the superintendent shall transmit the report to the licensee examined, together with a notice that affords the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report. In the event the superintendent determines that regulatory action is appropriate as a result of an examination, the superintendent may initiate any proceedings or actions provided by law.
[PL 2003, c. 636, §10 (NEW).]

7. Confidentiality of examination information. The disclosure of information is governed by this subsection.

A. Names and individual identification data for all viators and insured persons are considered private and confidential information and may not be disclosed by the superintendent, unless required by law. [PL 2003, c. 636, §10 (NEW).]

B. Except as otherwise provided in this chapter, all examination reports, workpapers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the superintendent of the financial condition or market conduct of a licensee, are confidential by law and privileged, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action. The superintendent is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the superintendent's official duties.

For the purposes of this paragraph and paragraph C, "chapter" includes the law of another state or jurisdiction that is substantially similar to this chapter. [PL 2003, c. 636, §10 (NEW).]

C. Documents, materials or other information, including, but not limited to, all workpapers and copies thereof, in the possession or control of the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries are confidential by law and privileged, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action if they are:

- (1) Created, produced or obtained by or disclosed to the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries in the course of assisting an examination made under this chapter or assisting a superintendent in the analysis or investigation of the financial condition or market conduct of a licensee; or

(2) Disclosed to the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries under paragraph D by a superintendent. [PL 2003, c. 636, §10 (NEW).]

D. The superintendent and any person that receives documents, material or other information while acting under the authority of the superintendent, including the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries, may not testify in any private civil action concerning any confidential documents, materials or information subject to paragraph A. [PL 2003, c. 636, §10 (NEW).]

E. In order to assist in the performance of the superintendent's duties, the superintendent:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph A, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries and with state, federal and international law enforcement authorities, as long as the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communication or other information; and

(2) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries and from regulatory and law enforcement officials of foreign or other domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information. [PL 2003, c. 636, §10 (NEW).]

F. A waiver of any applicable privilege or claim of confidentiality in the documents, materials or information does not occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in paragraph E. [PL 2003, c. 636, §10 (NEW).]

G. A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection is available and enforced in any proceeding in, and in any court of, this State. [PL 2003, c. 636, §10 (NEW).]

H. This chapter may not prevent or be construed as prohibiting the superintendent from disclosing the content of an examination report or preliminary examination report or results, or any matter relating thereto, to the superintendent of insurance of any other state or country or to law enforcement officials of this State or any other state or an agency of the Federal Government at any time or to the National Association of Insurance Commissioners, or its successor organization, as long as such 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. [PL 2003, c. 636, §10 (NEW).]
[PL 2003, c. 636, §10 (NEW).]

8. Conflict of interest. The following provisions apply.

A. An examiner may not be appointed by the superintendent 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 may not be construed to automatically preclude an examiner from being:

(1) A viator;

(2) An insured in an insurance policy acquired pursuant to a settlement contract; or

(3) A beneficiary in an insurance policy that is proposed to be acquired pursuant to a settlement contract. [PL 2003, c. 636, §10 (NEW).]

B. Notwithstanding the requirements of this subsection, the superintendent may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. [PL 2003, c. 636, §10 (NEW).]

[PL 2003, c. 636, §10 (NEW).]

9. Investigative authority of superintendent. In addition to the authority granted pursuant to section 220, the superintendent may investigate persons engaged in the business of settlements and persons suspected of engaging in fraudulent viatical or life settlement acts.

[PL 2003, c. 636, §10 (NEW).]

SECTION HISTORY

PL 1997, c. 430, §1 (NEW). PL 1997, c. 430, §2 (AFF). PL 2003, c. 636, §10 (AMD).

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