

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

§ 7201. Examinations, Investigations, Hearings and Appeals.

(a) *Witnesses Subpoenaed.* The Insurance Commissioner, either on the commissioner's own behalf or on behalf of any interested party, may take depositions, and subpoena any witnesses or documentary evidence. The commissioner may administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject to any hearing or investigation. The subpoena shall have the same force and effect and shall be served in the same manner as if issued from the Commonwealth Trial Court.

(b) *Contempt Proceedings.* If any individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the commissioner shall file a written report and proof of service of the subpoena in the Commonwealth Trial Court. Thereupon the court shall cause the individual to be brought before it to show cause why the individual should not be held in contempt, and if so held, may punish the individual as if the failure or refusal related to a subpoena from or testimony in that court.

(c) [Repealed.]

(d) *Examination of Agents, Managers, Promoters.* For the purpose of ascertaining its conditions, or compliance with the division, the Insurance Commissioner may as often as he or she deems advisable examine the insurance accounts, records, documents, and transactions of:

(1) Any insurance general agent, subagent, solicitor, or adjuster;

(2) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer.

(e) *Access to Records; Corrections.*

(1) Every person being examined, its officers, employees and representatives shall produce and make freely accessible to the Insurance Commissioner the accounts, records, documents, and files in that person's possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate or improperly kept or posted, the commissioner may employ experts to rewrite, post, or balance them at the expense of the person being examined, if the person has failed to correct the accounting records after the commissioner has given the person written notice and a reasonable opportunity to do so.

(f) *Examination Reports.*

(1) The Insurance Commissioner shall make a full written report of each examination made by him.

(2) The report shall be certified by the commissioner or by the examiner in charge of the examination and shall be filed at the Department of Commerce and Labor.

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

(3) The commissioner shall furnish to the person examined a copy of the examination report within 90 days after the execution of the report by the examiner and not less than 20 days prior to the filing of the report for public inspection in the department. If the person requests in writing within the 20-day period, the commissioner shall hold a hearing to consider objections of the person to the reports as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(4) The report, when filed for public inspection, shall be admissible in evidence in any action or proceeding brought by the commissioner against the person examined, or its officers, or agents, except, the commissioner or any examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the department.

(g) *Reports Withheld.* The Insurance Commissioner may withhold from public inspection any examination or investigation report for so long as the commissioner deems prudent.

(h) *Examination Expense.*

(1) Examinations of any insurer coming under this division made by the Insurance Commissioner, or his or her examiners and employees, shall, including fees, travel, and expenses incurred as to witnesses, be at the expense of the insurer examined.

(2) The insurer examined, and liable therefor, shall pay to the commissioner's examiners upon presentation of itemized statement thereof, their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination. The commissioner or examiners shall not receive or accept any additional emolument on account of any examination.

(i) *Hearings.*

(1) The Insurance Commissioner shall hold a hearing if required by this division. The commissioner may hold other hearings as deemed necessary for purposes within the scope of this division.

(2) The hearing shall be held at a place designated by the commissioner and, at the commissioner's discretion, it may be open to the public.

(3) Application for a hearing made to the commissioner pursuant to this division shall be in writing, shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. The commissioner shall hold the hearing applied for within 30 days after receipt of the application unless postponed by mutual consent.

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

(j) *Stay of Action.*

(1) A demand for a hearing received by the Insurance Commissioner prior to the effective date of action taken or proposed to be taken by the commissioner shall stay the action pending the hearing, except as to action taken or proposed:

(A) Under an order on hearing;

(B) Under an order pursuant to an order on hearing; or

(C) Under an order to make good an impairment of the assets of an insurer.

(2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefor fails to grant a stay, the person aggrieved may apply to the Commonwealth Trial Court for a stay of the commissioner's action.

(k) *Notice of Hearing.*

(1) The Insurance Commissioner shall, not less than 10 days in advance, give notice to each person to be affected by the hearing of the matters prescribed in subsection (j) of this section.

(2) If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons directly affected by the hearing.

(l) *Show Cause Notice.* If any person is entitled to a hearing by this division before any proposed action is taken, the notice of the proposed action may be in the form of a notice to show cause stating that the proposed action may be taken unless such person shows cause, at a hearing to be held as specified in the notice, why the proposed action should not be taken, and stating the basis of the proposed action.

(m) *Adjourned Hearing.* The Insurance Commissioner may adjourn any hearing from time to time and from place to place, without other notice of the adjourned hearing than its announcement at the hearing.

(n) *Nonattendance.* The validity of any hearing in accordance with the notice thereof shall not be affected by failure of any person to attend or to remain in attendance.

(o) *Procedure.*

(1) The Insurance Commissioner shall preside at the hearing.

(2) A copy of the record of the proceedings shall be furnished any person affected by the hearing or any other person upon written request and at the expense of that person.

(3) Upon good cause shown, the commissioner may permit any person who has a valid interest in the proceeding to intervene, appear, and be heard at the hearing.

(4) Any person heard shall make full disclosure of facts pertinent to the subject of inquiry as requested by the commissioner or by any person affected by the hearing.

(p) *Order on Hearing.*

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

(1) Within 30 days after the termination of a hearing the Insurance Commissioner shall make an order and shall give copy of the order to each person to whom notice of the hearing was given or required to be given.

(2) The order shall contain:

(A) A concise statement of the action taken;

(B) The effective date of the action;

(C) A designation of the provisions of this division pursuant to which the action is taken;

(D) Such other matters as may be required by law.

(3) An order on hearing may confirm, modify, or nullify action taken under an existing order, or may constitute the taking of any new action coming within the scope of the notice of such hearing.

(q) *Appeal from Commissioner's Order.*

(1) Any person aggrieved on account of any official action or threatened action of the Insurance Commissioner, or of the commissioner's failure to act if such failure is deemed to constitute an act under this division, may demand a hearing thereon as provided in subsection (i) of this section. Any person aggrieved by any order of the commissioner, including any order refusing a hearing, may appeal to the Commonwealth Trial Court.

(2) The appeal must be taken within 30 days after the order complained of was given by the commissioner. If not so taken, the right to appeal from or restrain action under the order shall conclusively be deemed to have been waived.

(3) For the purpose of this section, "person aggrieved" shall include any person directly or indirectly injured or threatened with injury on account of any such order or action whether or not the person was a party to the proceedings, if any, out of which the order or action arises.

(r) *How Appeal Taken.* The appeal shall be taken by a petition for review. To the extent not inconsistent with provisions of this division, 1 CMC § 9112 shall govern the appeal.

(s) *Cost of Record on Appeal.* The cost of record on appeal may be included in the costs allowed by the court.

(t) *Stay of Action on Appeal.*

(1) The taking of an appeal shall not stay any action taken or proposed to be taken by the Insurance Commissioner under the order appealed from unless a stay is granted by the commissioner or the reviewing court.

(2) In granting a stay of action, the commissioner or the court shall consider whether the stay would tend to injure the public interest, and may require of the person taking the appeal such security or other conditions as may be deemed proper.

(3) If the order appealed from is one suspending, revoking, or refusing to renew an agent's broker's, solicitor's, or adjuster's license, the appellant, by

TITLE 4: ECONOMIC RESOURCES
DIVISION 7: INSURANCE

filing a bond with the Clerk of Court, subject to approval of the court, in the sum of \$1,000, conditioned to pay all costs that may be awarded against him, may, if filed prior to the effective date of the order, supersede the order appealed from until the final determination of the appeal.

(u) *Appeals from Trial Court.* An appeal from the decision of the trial court on the petition for review may be taken as in any civil action.

(v) *Administrative Procedure Act.* Unless specifically exempted by the provisions of this division, or unless otherwise inconsistent with this division, the provisions of the Administrative Procedure Act (1 CMC § 9101 et seq.) shall apply to rules, hearings, and appeals under this section.

Source: PL 3-107, § 14, modified; subsection (c) repealed by PL 18-34 § 5 (Feb. 14, 2014).

Commission Comment: Section 4 of PL 6-25, the “Commonwealth Judicial Reorganization Act of 1989,” provides that “[w]herever the term ‘Commonwealth Trial Court’ appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.”