

**304.2-230 Conduct of examination -- Immunity for examiners or analysts -- Access to records -- Corrections -- Penalty.**

- (1) Whenever the commissioner determines to examine the affairs of any person, he or she shall designate one (1) or more examiners, which may include analysts, and instruct them as to the scope of the examination. The examiner or analyst shall, upon demand, exhibit his or her official credentials to the person under examination. In conducting the examination, the examiner or analyst 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 deems appropriate.
- (2)
  - (a)
    1. An examiner or analyst may not be appointed by the commissioner if the examiner or analyst, 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.
    2. This subsection shall not be construed to automatically preclude an examiner or analyst from being:
      - a. A policyholder or claimant under an insurance policy;
      - b. A grantor of a mortgage or similar instrument on the examiner's or analyst's residence to a regulated entity if done under customary terms and in the ordinary course of business;
      - c. An investment owner in shares of regulated diversified investment companies; or
      - d. A settler or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.
  - (b) Notwithstanding the requirements of paragraph (a) of this subsection, 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 these persons may from time to time be similarly employed or retained by persons subject to examination.
- (3)
  - (a) Except as provided in paragraph (b) of this subsection, any examiner or analyst performing an examination of an insurer on behalf of, and as called by, the commissioner, including any analyst engaged in review, verification, and analysis of an insurer, shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to, or loss of property, or personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the examiner or analyst, or any assistant or contractor, arising out of, or by reason of, their duties or employment.
  - (b) Nothing in this subsection shall be construed to hold the examiner or analyst, or any assistant or contractor, immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the examiner or analyst or any assistant or contractor.

- (4) The commissioner shall conduct the examination in an expeditious, fair, and impartial manner.
- (5) Upon examination, the commissioner, or the examiner or analyst if specifically so authorized in writing by the commissioner, shall have power to issue subpoenas, administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.
- (6) Every person being examined, and its officers, attorneys, employees, agents, and representatives, shall:
  - (a) Make freely available to the commissioner, or his or her examiners or analysts, the accounts, records, documents, files, information, assets, and matters of the person in its possession or control relating to the subject of the examination; and
  - (b) Facilitate the examination.
- (7)
  - (a) Neither the commissioner nor any examiner or analyst shall remove any record, account, document, file, or other property of the person being examined from the offices or place of that person except with the person's written consent in advance of the removal or pursuant to an order of court duly obtained.
  - (b) This subsection shall not be deemed to affect the making and removal of copies or abstracts of any record, account, document, or file.
- (8) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners or analysts in the exercise of their authority pursuant to this section is guilty of a violation of this code.
- (9)
  - (a) The commissioner may terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.
  - (b) Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action.
  - (c) The commissioner may use, and if appropriate, may make public, any final or preliminary examination report, any examiner's or analyst's workpapers or other documents, or any other information discovered or developed during the course of the examination in the furtherance of any legal or regulatory action that the commissioner may, in his or her sole discretion, deem appropriate.
  - (d) Nothing in this subsection shall be binding upon the court in making determinations about relevancy and admissibility in any civil action pertaining to any examination documents.

**Effective:** July 14, 2022

**History:** Amended 2022 Ky. Acts ch. 133, sec. 2, effective July 14, 2022. -- Amended 2010 Ky. Acts ch. 24, sec. 940, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 152, sec. 2, effective July 15, 2008. -- Created 1970 Ky. Acts ch. 301, subtit. 2, sec. 23, effective June 18, 1970.