

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0992.01 Christy Chase x2008

HOUSE BILL 17-1231

HOUSE SPONSORSHIP

Arndt and Lawrence,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A REORGANIZATION OF STATUTES GOVERNING THE**
102 **AUTHORITY OF THE COMMISSIONER OF INSURANCE TO EXAMINE**
103 **COMPANIES ENGAGED IN THE BUSINESS OF INSURANCE IN THIS**
104 **STATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, the commissioner of insurance (commissioner) is authorized to conduct financial examinations and market conduct examinations of companies engaged in the insurance business in

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Colorado. Financial examinations, which the commissioner conducts on every company domiciled in Colorado once every 5 years, are intended to ensure that regulated insurance companies have proper corporate governance and internal controls and are able to pay claims. Market conduct examinations are intended to ensure that regulated insurance companies are complying with applicable laws and rules and that policyholders, providers, and beneficiaries are treated equitably. Statutes pertaining to both financial examinations and market conduct examinations are intertwined and, in some cases, overlap and conflict.

Because of the repeal and relocation of market conduct provisions under sections 2 through 10 of the bill, **section 1** of the bill consolidates and relocates provisions that apply generally to the commissioner and the division of insurance (division) regarding confidential treatment of documents the commissioner obtains during an investigation, the subpoena powers of the division, and the commissioner's ability to contract with experts in conducting an investigation.

Sections 2 through 10 separate the market conduct examination provisions from the financial examination provisions, repealing and relocating the market conduct examination provisions to a separate part and more clearly delineating the scope and functions of the 2 distinct types of examinations conducted by the commissioner.

With regard to market conduct reviews, section 10 also uses the term "market conduct surveillance" and specifies the types of activities that includes, such as market analysis, interrogatories, and market conduct examinations.

Sections 11 through 16 make conforming amendments based on the repeal and relocation of the market conduct examination provisions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-1-139,
3 10-1-140, and 10-1-141 as follows:

4 **10-1-139. Confidentiality.** (1) EXCEPT AS OTHERWISE PROVIDED
5 BY LAW, WHEN THE COMMISSIONER CONDUCTS AN INVESTIGATION, ALL
6 DOCUMENTS, INCLUDING WORKING PAPERS, CLAIM FILES, RECORDED
7 INFORMATION, ELECTRONIC MAIL, AND ALL COPIES OF THOSE DOCUMENTS,
8 THAT ARE PRODUCED OR OBTAINED BY OR DISCLOSED TO THE
9 COMMISSIONER OR ANY OTHER PERSON IN THE COURSE OF THE
10 INVESTIGATION SHALL BE TREATED AS CONFIDENTIAL UNTIL THE

1 COMMISSIONER CONCLUDES THE INVESTIGATION. AFTER AN
2 INVESTIGATION IS CONCLUDED, THE RECORDS ARE SUBJECT TO THE
3 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

4 (2) THIS SECTION DOES NOT APPLY TO AN EXAMINATION
5 CONDUCTED PURSUANT TO PART 2 OF THIS ARTICLE 1 OR TO A MARKET
6 CONDUCT SURVEILLANCE CONDUCTED PURSUANT TO PART 3 OF THIS
7 ARTICLE 1.

8 **10-1-140. Subpoena authority.** THE DIVISION MAY ISSUE
9 SUBPOENAS, ADMINISTER OATHS, AND EXAMINE UNDER OATH ANY PERSON
10 AS TO ANY MATTER RELEVANT TO THE REGULATORY AUTHORITY OF THE
11 DIVISION. UPON THE FAILURE OR REFUSAL OF A PERSON TO OBEY A
12 SUBPOENA, THE DIVISION MAY PETITION A COURT OF COMPETENT
13 JURISDICTION FOR AN ORDER, WHICH ORDER IS ENFORCEABLE THROUGH
14 CONTEMPT PROCEEDINGS, COMPELLING THE PERSON TO APPEAR AND
15 TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. THE COMMISSIONER MAY
16 ARRANGE FOR THE SERVICES OF AN ADMINISTRATIVE LAW JUDGE
17 APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24 TO TAKE
18 EVIDENCE AND TO MAKE FINDINGS AND REPORT THEM TO THE
19 COMMISSIONER.

20 **10-1-141. Investigations - rules.** (1) THE COMMISSIONER MAY
21 CONTRACT, PURSUANT TO SECTION 24-50-504 (2)(c) AND (2)(e), WITH A
22 PERSON THAT HAS TECHNICAL OR SUBJECT MATTER EXPERTISE OR SKILL
23 AND EXPERIENCE IN INVESTIGATIVE TECHNIQUES TO ASSIST THE DIVISION
24 IN PERFORMING INVESTIGATIONS OF A COMPANY OR PRODUCER PURSUANT
25 TO THIS TITLE 10 WHEN THE COMMISSIONER DETERMINES THAT THE
26 DIVISION LACKS SUFFICIENT TECHNICAL EXPERTISE TO PERFORM THE
27 INVESTIGATION. INVESTIGATIONS CONDUCTED PURSUANT TO THIS SECTION

1 DO NOT INCLUDE MARKET CONDUCT SURVEILLANCE ACTIONS CONDUCTED
2 PURSUANT TO PART 3 OF THIS ARTICLE 1. THE COMMISSIONER SHALL, BY
3 RULE, ESTABLISH WHEN CONTRACT INVESTIGATORS MAY BE USED FOR
4 INVESTIGATIONS. THE RULES MUST INCLUDE OUT-OF-STATE TRAVEL
5 REQUIREMENTS, CRITERIA FOR WHEN SPECIAL EXPERTISE IS REQUIRED FOR
6 THE INVESTIGATION, AND A REQUIREMENT THAT THERE MUST BE A
7 SIGNIFICANT PATTERN OF COMPLAINTS OR A WELL-DOCUMENTED
8 ALLEGATION AGAINST A COMPANY FOR AN INFORMAL INVESTIGATION TO
9 BE WARRANTED.

10 (2) THE INVESTIGATED COMPANY OR PRODUCER SHALL PAY THE
11 REASONABLE FEES AND EXPENSES OF A PERSON RETAINED OR DESIGNATED
12 FOR INVESTIGATIONS OF THE COMPANY OR PRODUCER PURSUANT TO
13 SUBSECTION (1) OF THIS SECTION DIRECTLY TO THE RETAINED OR
14 DESIGNATED PERSON, AS DETERMINED BY THE COMMISSIONER. THE
15 INVESTIGATED COMPANY OR PRODUCER MAY CONTEST THE AMOUNT OF
16 FEES AND EXPENSES CHARGED BY THE RETAINED OR DESIGNATED PERSON
17 BY FILING AN OBJECTION WITH THE COMMISSIONER, SETTING FORTH THE
18 CHARGES THAT THE INVESTIGATED COMPANY OR PRODUCER CONSIDERS TO
19 BE UNREASONABLE AND THE BASIS FOR THE CLAIM THAT THE CHARGES
20 ARE UNREASONABLE. A DISPUTED AMOUNT IS NOT DUE UNLESS THE
21 COMMISSIONER REVIEWS THE OBJECTION AND MAKES A WRITTEN FINDING
22 THAT THE DISPUTED CHARGES WERE REASONABLE IN RELATION TO THE
23 INVESTIGATION PERFORMED.

24 **SECTION 2.** In Colorado Revised Statutes, **amend** 10-1-202 as
25 follows:

26 **10-1-202. Definitions.** As used in this part 2, unless the context
27 otherwise requires:

1 (1) "Company" means any person or group of persons engaging
2 in or proposing or attempting to engage in any transaction or kind of
3 insurance or surety business and any person or group of persons who may
4 otherwise be subject to any administrative, regulatory, or taxing authority
5 of the commissioner as well as any advisory organization or rating
6 organization as defined in section 10-4-402.

7 ~~(1.5) "Complaint" means a written or documented oral~~
8 ~~communication primarily expressing a grievance or an expression of~~
9 ~~dissatisfaction.~~

10 ~~(1.7) "Desk examination" means an examination that is conducted~~
11 ~~by an examiner at a location other than the insurer's premises. A desk~~
12 ~~examination is usually performed in the offices of the division with the~~
13 ~~insurer providing requested documents by hard copy, microfiche, discs,~~
14 ~~or other electronic media for review.~~

15 ~~(2) "Division" means the division of insurance.~~

16 ~~(3) (2) "Examination" means a formal financial examination, or~~
17 ~~market conduct examination, as well as informal investigations~~
18 ~~EXAMINATIONS, conducted by the commissioner for the purpose of~~
19 ~~determining compliance with the law. Market conduct examinations may~~
20 ~~include routine, targeted, follow-up, multistate, or desk examinations.~~

21 ~~(4) (3) "Examiner" means any individual or firm authorized by the~~
22 ~~commissioner to conduct an examination under this part 2.~~

23 (4) "INFORMAL EXAMINATION" MEANS ALL INQUIRIES BY THE
24 DIVISION INTO THE FINANCIAL CONDITION OF A COMPANY, OTHER THAN
25 THE FORMAL FINANCIAL EXAMINATION OF A COMPANY THAT MUST BE
26 CONDUCTED ONCE EVERY FIVE YEARS PURSUANT TO SECTION 10-1-203 (1).

27 (5) "Insurance department" means the commissioner or other

1 government official or agency of a state other than Colorado exercising
2 powers and duties substantially equivalent to those of the commissioner
3 or the division.

4 (6) "Insurer" means any person, firm, corporation, association, or
5 aggregation of persons doing an insurance business and subject to the
6 insurance supervisory authority of, or to liquidation, rehabilitation,
7 reorganization, or conservation by, the commissioner or any equivalent
8 insurance supervisory official of another state.

9 ~~(7) "Market analysis" means a process whereby market conduct~~
10 ~~surveillance personnel collect and analyze information from filed~~
11 ~~schedules, surveys, required reports, and other sources in order to develop~~
12 ~~a baseline understanding of the marketplace and to identify patterns or~~
13 ~~practices of insurers that deviate significantly from the norm or that may~~
14 ~~pose risk to the insurance consumer.~~

15 ~~(8) "Market conduct action" means any of the full range of~~
16 ~~activities that the commissioner may initiate to assess and address the~~
17 ~~market practices of insurers licensed to conduct business in this state,~~
18 ~~from market analysis to targeted, on-site examinations. The~~
19 ~~commissioner's activities to resolve an individual consumer complaint or~~
20 ~~other report of a specific instance of misconduct are not market conduct~~
21 ~~actions for the purposes of this part 2.~~

22 ~~(9) "Market conduct surveillance personnel" means those~~
23 ~~individuals employed by or under contract with the commissioner to~~
24 ~~collect, analyze, review, or act on information about the insurance~~
25 ~~marketplace that identifies patterns or practices of insurers.~~

26 ~~(10) (7) "NAIC" or "national association of insurance~~
27 ~~commissioners" means the organization of insurance regulators from the~~

1 fifty states, the District of Columbia, and the four United States
2 territories.

3 ~~(11) "NAIC market analysis handbook" means the outline of the~~
4 ~~elements and objectives of market analysis developed and adopted by the~~
5 ~~NAIC and the process by which states can establish and implement~~
6 ~~market analysis programs, or its successor document.~~

7 ~~(12) "NAIC market conduct examiner's handbook" means the set~~
8 ~~of guidelines developed and adopted by the NAIC that documents~~
9 ~~established practices to be used by market conduct surveillance personnel~~
10 ~~in developing and executing an examination, or its successor document.~~

11 ~~(13) "NAIC market conduct uniform examination procedures"~~
12 ~~means the set of guidelines developed and adopted by the NAIC designed~~
13 ~~to be used by market conduct surveillance personnel in conducting an~~
14 ~~examination, or its successor document.~~

15 ~~(14) "On-site examination" means an examination conducted at~~
16 ~~the insurer's home, the insurer's office, or the location where the records~~
17 ~~under review are stored.~~

18 ~~(15) (8) "Person" means any individual, aggregation of~~
19 ~~individuals, trust, association, partnership, or corporation, or any agent or~~
20 ~~affiliate thereof.~~

21 ~~(16) "Qualified contract examiner" means a person who is under~~
22 ~~contract with the commissioner and who is qualified by education,~~
23 ~~experience, and, where applicable, professional designations to perform~~
24 ~~market conduct actions.~~

25 ~~(17) "Standard data request" means the set of field names and~~
26 ~~descriptions developed and adopted by the NAIC for use by market~~
27 ~~conduct surveillance personnel in an examination.~~

1 ~~(18) "Targeted examination" means an examination, including,~~
2 ~~but not limited to, limited review and analysis conducted through a desk~~
3 ~~examination or on-site examination and in accordance with market~~
4 ~~conduct uniform examination procedures. The targeted examination shall~~
5 ~~be of a specific insurer's conduct, practices, or risks identified through~~
6 ~~market analysis that have not been remedied by the insurer, including, but~~
7 ~~not limited to, underwriting and rating, marketing and sales,~~
8 ~~complaint-handling, operations and management, advertising materials,~~
9 ~~licensing, policyholder services, nonforfeitures, claims handling, or policy~~
10 ~~forms and filings. A targeted examination may be conducted as a desk~~
11 ~~examination or as an on-site examination.~~

12 ~~(19) "Third-party model or product" means a model or product~~
13 ~~provided by an entity separate from and not under direct or indirect~~
14 ~~corporate control of the insurer using the model or product.~~

15 **SECTION 3.** In Colorado Revised Statutes, 10-1-203, **amend** (1)
16 as follows:

17 **10-1-203. Authority, scope, and scheduling of examinations.**

18 (1) The commissioner or the commissioner's designee may conduct an
19 examination ~~or investigation~~ of any company as often as the
20 commissioner, in the commissioner's sole discretion, deems appropriate
21 but shall, at a minimum, conduct a formal financial examination of every
22 insurer licensed in this state not less frequently than once every five years;
23 except that this does not include eligible nonadmitted insurers regulated
24 in accordance with article 5 of this ~~title~~ TITLE 10. In scheduling financial
25 ~~or market conduct~~ examinations and in determining their nature, scope,
26 and frequency, the commissioner shall consider ~~such~~ **SUCH** as the
27 results of financial statement analyses and ratios, changes in management

1 or ownership, actuarial opinions, reports of independent certified public
2 accountants, ~~complaint analyses, underwriting and claims practices,~~
3 ~~pricing, product solicitation, policy form compliance, market share~~
4 ~~analyses,~~ and other criteria as set forth in the most recent available edition
5 of the examiners' handbook adopted by the national association of
6 insurance commissioners.

7 **SECTION 4.** In Colorado Revised Statutes, 10-1-204, **amend**
8 (1)(a), (2)(a), (4), (5), (6)(b), and (9)(a); and **repeal** (1)(b), (3), (9)(b),
9 (9)(c), (10), and (11) as follows:

10 **10-1-204. Conduct of examinations - conferences.** (1) (a) In
11 conducting the examination, the examiners shall observe those guidelines
12 and procedures set forth in the ~~most recent available edition of the~~
13 ~~examiners' handbook adopted by the national association of insurance~~
14 ~~commissioners and the Colorado insurance examiners handbook.~~ The
15 commissioner may also employ ~~such~~ other guidelines or procedures as the
16 commissioner ~~may deem~~ DEEMS appropriate.

17 (b) ~~An examination under this article shall not be limited to an~~
18 ~~examination of the financial condition of a company but may, in the~~
19 ~~discretion of the commissioner, also include all other activities and affairs~~
20 ~~of the company.~~

21 (2) (a) Every company or person from whom information is
22 sought and all officers, directors, and agents ~~thereof~~ OF THE COMPANY OR
23 PERSON shall provide to the examiners timely, convenient, and free access
24 at reasonable hours at its offices to all books, records, accounts, papers,
25 tapes, computer records, and other documents relating to the property,
26 assets, business, and affairs of the company being examined. ~~If the~~
27 ~~examination is an examination as defined in section 10-1-202 (3), such~~

1 THE company or person shall make ~~such~~ THE books, records, and
2 documents available for examination or inspection at the office location
3 of the division when the commissioner determines that it is reasonably
4 cost-effective to do so. The officers, directors, employees, and agents of
5 the company or person shall facilitate the examination and aid in the
6 examination ~~so far as~~ TO THE EXTENT it is in their power to do so.

7 (3) ~~The commissioner and all examiners shall have the power to~~
8 ~~issue subpoenas, administer oaths, and examine under oath any person as~~
9 ~~to any matter pertinent to the examination. Upon the failure or refusal of~~
10 ~~any person to obey a subpoena, the commissioner may petition a court of~~
11 ~~competent jurisdiction for an order, which shall be enforceable through~~
12 ~~contempt proceedings, compelling the person to appear and testify or~~
13 ~~produce documentary evidence. The commissioner may arrange for the~~
14 ~~services of an administrative law judge appointed pursuant to part 10 of~~
15 ~~article 30 of title 24, C.R.S., to take evidence and to make findings and~~
16 ~~report them to the commissioner.~~

17 (4) Any person who knowingly or willfully testifies falsely in
18 reference to any matter material to an ~~investigation~~, examination or
19 inquiry is guilty of a misdemeanor and, upon conviction, ~~thereof~~, shall be
20 punished by a fine of not more than five thousand dollars, ~~or~~ by
21 imprisonment in the county jail for not more than three months, or by
22 both such fine and imprisonment.

23 (5) Any person who knowingly or willfully makes any false
24 certificate, entry, or memorandum upon any of the books or papers of a
25 company or upon any statement filed or offered to be filed in the division
26 or used in the course of any examination OR inquiry, ~~or investigation~~, with
27 the intent to deceive the commissioner or any person appointed by the

1 commissioner to CONDUCT OR make ~~such~~ THE examination OR inquiry, ~~or~~
2 ~~investigation~~, is guilty of a misdemeanor and, upon conviction, ~~thereof~~,
3 shall be punished by a fine of not more than five thousand dollars, ~~or~~ by
4 imprisonment in the county jail for not less than two months nor more
5 than twelve months, or by both such fine and imprisonment.

6 (6) (b) (I) The commissioner may accept, as part of ~~any such~~ AN
7 examination, reports made by any person qualified and competent to
8 conduct the examination as set forth in this subsection (6); ~~No such~~
9 EXCEPT THAT NEITHER THE person, nor any member of ~~such~~ THE person's
10 immediate family, ~~shall be officers~~ MAY BE:

11 (A) AN OFFICER of, connected with, or financially interested in the
12 company, entity, or applicant being examined, other than as
13 ~~policyholders, nor shall they be~~ A POLICYHOLDER; OR

14 (B) Financially interested in any other corporation or person
15 affected by the examination or by any related investigation or hearing.

16 (II) ~~Such persons~~ A PERSON THAT CONDUCTS AN EXAMINATION
17 PURSUANT TO THIS SUBSECTION (6) shall keep strictly confidential all
18 information, regardless of its source, obtained through any examination
19 or about any examinee and shall disclose ~~such~~ THE information only to the
20 commissioner or the examinee upon the specific request of either. The
21 commissioner shall establish guidelines for assuring the neutrality of
22 those persons to be authorized to supplement the examination procedures
23 authorized in this section.

24 (III) The EXAMINEE SHALL PAY THE reasonable expenses and
25 charges of ~~persons so~~ A PERSON retained or designated ~~shall be paid~~
26 PURSUANT TO THIS SUBSECTION (6) directly ~~by the examinee to such~~
27 ~~persons~~ THE PERSON. The examinee may contest the amount of fees, costs,

1 and expenses charged to it by such persons BY THE PERSON by filing an
2 objection with the commissioner, which sets SETTING forth the charges
3 that the examinee considers to be unreasonable and the basis for the claim
4 that the charges are unreasonable. No amounts that are so A disputed will
5 be AMOUNT IS NOT due to the examiner unless and until the commissioner
6 has reviewed REVIEWS the objection and made MAKES a written finding
7 that the disputed charges were reasonable in relation to the examination
8 performed.

9 (9) (a) ~~The costs of financial~~ FOR examinations of foreign
10 companies made outside the borders of this state and of executive or
11 branch offices of domestic companies located outside the borders of this
12 state, THE EXAMINED COMPANY shall be paid by the company examined
13 and shall include PAY THE COSTS OF THE EXAMINATION, INCLUDING the
14 expenses of the commissioner and the commissioner's assistants, who
15 shall MUST be paid the same compensation as other examiners on such
16 examinations.

17 (b) ~~The reasonable expenses of market conduct examinations shall~~
18 ~~be paid by the company examined, but shall not include the compensation~~
19 ~~of the commissioner and the commissioner's assistants.~~

20 (c) (I) ~~There is a presumption that a market conduct examination~~
21 ~~of a domestic company shall be conducted by the commissioner or the~~
22 ~~commissioner's assistants unless the commissioner determines that good~~
23 ~~cause exists to have the examination conducted by a contract examiner.~~

24 (II) ~~The commissioner shall develop rules for determining when~~
25 ~~contract market conduct examiners can be used. Such rules shall include,~~
26 ~~but shall not be limited to, such factors as out-of-state travel~~
27 ~~requirements, workload needs, special expertise required for the~~

1 ~~examination, and market issues requiring an unanticipated examination.~~

2 ~~(10) The commissioner may also examine a company upon the~~
3 ~~request of five or more of the company's policyholders representing at~~
4 ~~least one hundred thousand dollars' worth of insurance in force, who shall~~
5 ~~make affidavit of their belief, with specifications of their reasons therefor~~
6 ~~in writing, that such company is in an unsound or insolvent condition; but~~
7 ~~only the United States branches of companies incorporated in foreign~~
8 ~~countries shall be examined by the commissioner.~~

9 ~~(11) For every market conduct examination conducted pursuant~~
10 ~~to this part 2, the division shall hold:~~

11 ~~(a) A preexamination conference between the division and the~~
12 ~~insurer subject to the examination. The division shall design and conduct~~
13 ~~the preexamination conference in accordance with the preexamination~~
14 ~~provisions of the NAIC market conduct examiner's handbook for the~~
15 ~~parties to discuss:~~

16 ~~(I) Early resolution and simplification of issues and any disputes;~~

17 ~~(II) Avoidance of the production of unnecessary or duplicative~~
18 ~~information; and~~

19 ~~(III) Facilitation of the complete, accurate, just, speedy, and~~
20 ~~inexpensive disposition of the examination.~~

21 ~~(b) A pre-draft conference between the division, the examiner,~~
22 ~~and the insurer subject to the examination at least thirty days before the~~
23 ~~filing of a draft report. The division shall design and conduct the~~
24 ~~conference in accordance with the examination report provisions of the~~
25 ~~NAIC market conduct examiner's handbook to facilitate:~~

26 ~~(I) The resolution of outstanding issues;~~

27 ~~(II) Discussing and resolving corrective actions; and~~

1 ~~(HH) Reviewing the report before it is printed in draft form.~~

2 **SECTION 5.** In Colorado Revised Statutes, 10-1-205, **amend** (1),
3 (4)(a), (4)(e), and (8) as follows:

4 **10-1-205. Financial examination reports.** (1) ~~The provisions of~~
5 ~~this section shall apply to financial examinations and market conduct~~
6 ~~examinations but shall not apply to informal investigations of consumer~~
7 ~~complaints except as otherwise provided in paragraph (b) of subsection~~
8 ~~(8) of this section.~~ Examination reports ~~shall~~ **MUST** comprise only facts
9 appearing upon the books, records, or other documents of the company,
10 its agents, or other persons examined, or as ascertained from the
11 testimony of its officers or agents or other persons examined concerning
12 its affairs, and ~~such~~ **THE** conclusions and recommendations as the
13 examiners find reasonably warranted based upon the facts.

14 (4) (a) All orders entered pursuant to ~~paragraph (a) of subsection~~
15 ~~(3)~~ **SUBSECTION (3)(a)** of this section ~~shall~~ **MUST** be accompanied by
16 findings and conclusions resulting from the commissioner's consideration
17 and review of the examination report, relevant examiner work papers, and
18 any written submissions or rebuttals. ~~Any such~~ **THE** order ~~shall be~~
19 ~~considered~~ **IS** a final agency decision and ~~shall~~ **MUST** be served upon the
20 company by certified mail together with a copy of the adopted
21 examination report. ~~Review of such decision may be sought in the district~~
22 ~~court in and for the city and county of Denver and shall be governed by~~
23 ~~the "State Administrative Procedure Act", article 4 of title 24, C.R.S.~~
24 **NOTWITHSTANDING THE REQUIREMENTS OF SECTION 10-1-127, THE FINAL**
25 **AGENCY DECISION IS SUBJECT TO JUDICIAL REVIEW BY THE DISTRICT**
26 **COURT PURSUANT TO SECTION 24-4-106. Within sixty THIRTY days of the**
27 **AFTER** issuance of the adopted report, the company shall file affidavits

1 executed by each of its directors stating under oath that ~~they~~ THE
2 DIRECTORS have received a copy of the adopted report and related orders.

3 (e) Any order issued by the commissioner pursuant to ~~paragraph~~
4 ~~(d) of subsection (3)~~ SUBSECTION (3)(d) of this section may be appealed
5 ~~directly to the DISTRICT court. of appeals.~~

6 (8) **Confidentiality of ancillary information.** (a) All working
7 papers, recorded information, documents, and copies thereof that are
8 produced or obtained by or disclosed to the commissioner or any other
9 person in the course of ~~a financial or market conduct~~ AN examination
10 made under this part 2 ~~shall be given~~ OR IN THE COURSE OF ANALYSIS OF
11 THE FINANCIAL CONDITION OF THE COMPANY BY THE COMMISSIONER ARE
12 confidential, ~~treatment~~, are not subject to subpoena, and may not be made
13 public by the commissioner or any other person except to the extent
14 provided in subsection (5) of this section; except that THE COMMISSIONER
15 MAY GRANT THE NAIC access to ~~such~~ THE materials. ~~may be granted to~~
16 ~~the national association of insurance commissioners.~~ Disclosure of the
17 ~~said materials shall~~ MAY be made only upon the prior written agreement
18 of the recipient to hold ~~such~~ THE information confidential as required by
19 this section or upon the prior written consent of the company to which it
20 pertains.

21 (b) ~~When an informal investigation of a consumer complaint is~~
22 ~~conducted by the commissioner, all working papers, claim files, recorded~~
23 ~~information, and documents, and all copies thereof, that are produced or~~
24 ~~obtained by or disclosed to the commissioner or any other person in the~~
25 ~~course of an informal investigation shall be given confidential treatment~~
26 ~~until the informal investigation is concluded by the commissioner. After~~
27 ~~an informal investigation is concluded, the records shall no longer be~~

1 ~~considered confidential except as otherwise provided in article 72 of title~~
2 ~~24, C.R.S., relating to public records~~ NEITHER THE COMMISSIONER NOR
3 ANY PERSON WHO RECEIVED THE DOCUMENTS, MATERIALS, OR OTHER
4 INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE
5 COMMISSIONER, INCLUDING THE NAIC AND ITS AFFILIATES AND
6 SUBSIDIARIES, MAY TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING
7 ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT
8 TO SUBSECTION (8)(a) OF THIS SECTION.

9 **SECTION 6.** In Colorado Revised Statutes, 10-1-207, **amend** (5)
10 as follows:

11 **10-1-207. Immunity from liability - prohibited activity.** (5) An
12 insurer shall not take any retaliatory personnel action against an employee
13 because the employee provides information to or testifies before the
14 commissioner conducting ~~a market conduct investigation~~ AN
15 EXAMINATION into the practices of the ~~insurer~~ COMPANY.

16 **SECTION 7.** In Colorado Revised Statutes, **repeal** 10-1-208,
17 10-1-209, 10-1-210, 10-1-211, 10-1-212, 10-1-213, 10-1-214, 10-1-215,
18 and 10-1-216.

19 **SECTION 8.** In Colorado Revised Statutes, **amend** 10-1-217 as
20 follows:

21 **10-1-217. Coordination with other states through NAIC.** The
22 commissioner shall share information and coordinate the division's
23 ~~market analysis and~~ examination efforts with other states through the
24 NAIC.

25 **SECTION 9.** In Colorado Revised Statutes, 10-1-218, **repeal** (1)
26 as follows:

27 **10-1-218. Additional duties of commissioner.** (1) ~~At least once~~

1 ~~a year and more frequently if deemed necessary, the commissioner shall~~
2 ~~make available to insurers and other entities subject to this title~~
3 ~~information on new laws and rules, enforcement actions, and other~~
4 ~~information the commissioner deems pertinent to ensure compliance with~~
5 ~~market conduct requirements. The commissioner shall determine an~~
6 ~~appropriate manner in which to provide the information to insurers. The~~
7 ~~failure of the commissioner to provide any such information shall not be~~
8 ~~a defense for any insurer that fails to comply with an insurance law or~~
9 ~~rule of this state.~~

10 **SECTION 10.** In Colorado Revised Statutes, **add** part 3 to article
11 1 of title 10 as follows:

12 **PART 3**

13 **MARKET CONDUCT**

14 **10-1-301. Legislative declaration.** THE GENERAL ASSEMBLY
15 FINDS, DETERMINES, AND DECLARES THAT IT IS NECESSARY TO ESTABLISH
16 AN EFFECTIVE AND EFFICIENT SYSTEM FOR REVIEWING, EVALUATING, AND
17 ANALYZING THE ACTIVITIES, OPERATIONS, AND AFFAIRS OF ALL PERSONS
18 TRANSACTING THE BUSINESS OF INSURANCE IN THIS STATE AND ALL
19 PERSONS OTHERWISE SUBJECT TO THE JURISDICTION OF THE
20 COMMISSIONER. THIS PART 3 IS INTENDED TO ENABLE THE COMMISSIONER
21 TO ADOPT A FLEXIBLE SYSTEM OF REVIEW, EVALUATION, AND ANALYSIS
22 THAT DIRECTS RESOURCES AS MAY BE DEEMED APPROPRIATE AND
23 NECESSARY FOR THE ADMINISTRATION OF THE INSURANCE AND
24 INSURANCE-RELATED LAWS OF THIS STATE.

25 **10-1-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE
26 CONTEXT OTHERWISE REQUIRES:

27 (1) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE,

1 THE COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE.

2 (2) "COMPANY" MEANS ANY PERSON OR GROUP OF PERSONS
3 ENGAGING IN OR PROPOSING OR ATTEMPTING TO ENGAGE IN ANY
4 TRANSACTION OR KIND OF INSURANCE OR SURETY BUSINESS OR ANY
5 PERSON OR GROUP OF PERSONS WHO MAY OTHERWISE BE SUBJECT TO ANY
6 ADMINISTRATIVE, REGULATORY, OR TAXING AUTHORITY OF THE
7 COMMISSIONER, AS WELL AS ANY ADVISORY ORGANIZATION OR RATING
8 ORGANIZATION AS DEFINED IN SECTION 10-4-402.

9 (3) "COMPLAINT" MEANS ANY WRITTEN COMMUNICATION, OR
10 ORAL COMMUNICATION THAT IS SUBSEQUENTLY CONVERTED TO A
11 WRITTEN FORM, THAT EXPRESSES A GRIEVANCE OR DISSATISFACTION WITH
12 A SPECIFIC PERSON OR ENTITY SUBJECT TO REGULATION BY THE DIVISION.

13 (4) "DIVISION" MEANS THE DIVISION OF INSURANCE, THE
14 COMMISSIONER OF INSURANCE, OR A GOVERNMENT OFFICIAL OR AGENCY
15 OF A STATE OTHER THAN COLORADO EXERCISING POWERS AND DUTIES
16 SUBSTANTIALLY EQUIVALENT TO THOSE OF THE COMMISSIONER OR THE
17 DIVISION.

18 (5) "MARKET ANALYSIS" MEANS A PROCESS WHEREBY MARKET
19 CONDUCT SURVEILLANCE PERSONNEL COLLECT AND ANALYZE
20 INFORMATION FROM FILED SCHEDULES, SURVEYS, REQUIRED REPORTS, AND
21 OTHER SOURCES IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF
22 THE MARKETPLACE AND TO IDENTIFY PATTERNS OR PRACTICES OF
23 COMPANIES THAT DEVIATE FROM THE NORM OR THAT MAY POSE RISK TO
24 THE INSURANCE CONSUMER.

25 (6) "MARKET CONDUCT EXAMINATION" INCLUDES ANY TYPE OF
26 EXAMINATION AS SET FORTH IN THE MARKET REGULATION HANDBOOK
27 THAT ASSESSES A COMPANY'S COMPLIANCE WITH THE LAWS, RULES, AND

1 REGULATIONS APPLICABLE TO THE COMPANY. MARKET CONDUCT
2 EXAMINATIONS INCLUDE DESK EXAMINATIONS, ON-SITE EXAMINATIONS,
3 FOLLOW UP EXAMINATIONS, AND TARGETED EXAMINATIONS.

4 (7) "MARKET CONDUCT SURVEILLANCE" MEANS ANY OF THE FULL
5 RANGE OF ACTIVITIES THAT THE COMMISSIONER MAY INITIATE TO ASSESS
6 AND ADDRESS THE MARKET PRACTICES OF ANY COMPANY LICENSED OR
7 REGISTERED PURSUANT TO THIS TITLE 10 TO CONDUCT BUSINESS IN THIS
8 STATE, INCLUDING MARKET ANALYSIS, INTERROGATORIES, AND MARKET
9 CONDUCT EXAMINATIONS.

10 (8) "MARKET CONDUCT SURVEILLANCE PERSONNEL" MEANS THOSE
11 INDIVIDUALS EMPLOYED BY OR UNDER CONTRACT WITH THE
12 COMMISSIONER TO COLLECT, ANALYZE, REVIEW, OR ACT ON INFORMATION
13 ABOUT THE INSURANCE MARKETPLACE THAT IDENTIFIES PATTERNS OR
14 PRACTICES OF COMPANIES.

15 (9) "MARKET REGULATION HANDBOOK" MEANS THE GUIDELINES
16 DEVELOPED AND ISSUED BY THE NAIC THAT ARE DESIGNED TO BE USED TO
17 CONDUCT UNIFORM, STANDARDIZED MARKET CONDUCT SURVEILLANCE.

18 (10) "NAIC" OR "NATIONAL ASSOCIATION OF INSURANCE
19 COMMISSIONERS" MEANS THE ORGANIZATION OF INSURANCE REGULATORS
20 FROM THE FIFTY STATES, THE DISTRICT OF COLUMBIA, AND THE FOUR
21 UNITED STATES TERRITORIES.

22 (11) "PERSON" MEANS ANY INDIVIDUAL, AGGREGATION OF
23 INDIVIDUALS, TRUST, ASSOCIATION, PARTNERSHIP, OR CORPORATION, OR
24 ANY AGENT OR AFFILIATE THEREOF.

25 (12) "STANDARD DATA REQUEST" MEANS THE SET OF FIELD NAMES
26 AND DESCRIPTIONS DEVELOPED AND ADOPTED BY THE NAIC FOR USE BY
27 MARKET CONDUCT SURVEILLANCE PERSONNEL IN AN EXAMINATION.

1 (13) "THIRD-PARTY MODEL OR PRODUCT" MEANS A MODEL OR
2 PRODUCT PROVIDED BY AN ENTITY SEPARATE FROM AND NOT UNDER
3 DIRECT OR INDIRECT CORPORATE CONTROL OF THE COMPANY USING THE
4 MODEL OR PRODUCT.

5 **10-1-303. Market analysis - market conduct surveillance.**

6 (1) THE COMMISSIONER MAY PERFORM MARKET ANALYSIS BY GATHERING
7 AND ANALYZING INFORMATION FROM DATA CURRENTLY AVAILABLE TO
8 THE COMMISSIONER, INFORMATION FROM SURVEYS, DATA CALLS, OR
9 REPORTS THAT ARE SUBMITTED REGULARLY TO THE COMMISSIONER,
10 INFORMATION COLLECTED BY THE NAIC, AND INFORMATION FROM A
11 VARIETY OF OTHER SOURCES IN BOTH THE PUBLIC AND PRIVATE SECTORS
12 IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF THE MARKETPLACE
13 AND TO IDENTIFY FOR FURTHER REVIEW COMPANIES OR PRACTICES THAT
14 DEVIATE FROM THE NORM OR THAT MAY POSE A POTENTIAL RISK TO THE
15 INSURANCE CONSUMER. THE COMMISSIONER SHALL USE THE MARKET
16 REGULATION HANDBOOK AS A GUIDE IN PERFORMING THE MARKET
17 ANALYSIS.

18 (2)(a) IF THE COMMISSIONER DETERMINES THAT FURTHER INQUIRY
19 INTO A PARTICULAR COMPANY OR PRACTICE IS NEEDED, THE
20 COMMISSIONER MAY CONSIDER THE CONTINUUM OF OTHER TYPES OF
21 MARKET CONDUCT SURVEILLANCE AS SPECIFIED IN THIS SUBSECTION
22 (2)(a). THE COMMISSIONER SHALL INFORM THE COMPANY IN WRITING OF
23 THE TYPE OF MARKET CONDUCT SURVEILLANCE SELECTED IF IT INVOLVES
24 COMPANY PARTICIPATION OR RESPONSE. THE TYPES OF MARKET CONDUCT
25 SURVEILLANCE INCLUDE:

26 (I) CORRESPONDENCE WITH THE COMPANY;

27 (II) COMPANY INTERVIEWS;

- 1 (III) INFORMATION GATHERING;
- 2 (IV) POLICY AND PROCEDURE REVIEWS;
- 3 (V) INTERROGATORIES;
- 4 (VI) REVIEW OF COMPANY SELF-EVALUATIONS AND VOLUNTARY
- 5 COMPLIANCE PROGRAMS;
- 6 (VII) SELF-AUDITS; AND
- 7 (VIII) MARKET CONDUCT EXAMINATIONS.

8 (b) (I) THE COMMISSIONER SHALL TAKE STEPS REASONABLY
9 NECESSARY TO ELIMINATE REQUESTS FOR INFORMATION THAT DUPLICATE
10 INFORMATION PROVIDED AS PART OF A COMPANY'S FINANCIAL STATEMENT,
11 THE NAIC'S MARKET CONDUCT ANNUAL STATEMENT, OR OTHER REQUIRED
12 SURVEYS, DATA CALLS, OR REPORTS THAT ARE SUBMITTED REGULARLY TO
13 THE COMMISSIONER.

14 (II) THE COMMISSIONER MAY COORDINATE THE MARKET CONDUCT
15 SURVEILLANCE AND FINDINGS OF THIS STATE WITH MARKET CONDUCT
16 SURVEILLANCE AND FINDINGS OF OTHER STATES.

17 (3) NOTHING IN THIS SECTION REQUIRES THE COMMISSIONER TO
18 CONDUCT MARKET ANALYSIS PRIOR TO INITIATING ANY OTHER TYPE OF
19 MARKET CONDUCT SURVEILLANCE.

20 **10-1-304. Authority and scope of market conduct surveillance**
21 **- rules.** (1) THE COMMISSIONER MAY CONDUCT MARKET CONDUCT
22 SURVEILLANCE OF ANY COMPANY AS OFTEN AS THE COMMISSIONER, IN THE
23 COMMISSIONER'S SOLE DISCRETION, DEEMS APPROPRIATE. WHEN
24 INITIATING MARKET CONDUCT SURVEILLANCE AND IN DETERMINING ITS
25 NATURE, SCOPE, AND FREQUENCY, THE COMMISSIONER MAY CONSIDER
26 ANY MARKET ANALYSIS PERFORMED PURSUANT TO SECTION 10-1-303 AND
27 ANY OTHER CRITERIA AS SET FORTH IN THE MOST RECENT AVAILABLE

1 EDITION OF THE MARKET REGULATION HANDBOOK.

2 (2) FOR PURPOSES OF COMPLETING MARKET CONDUCT
3 SURVEILLANCE OF ANY COMPANY UNDER THIS PART 3, THE COMMISSIONER
4 MAY REVIEW, EVALUATE, OR ANALYZE ANY PERSON OR THE BUSINESS OF
5 ANY PERSON TO THE EXTENT THE ACTION IS, IN THE SOLE DISCRETION OF
6 THE COMMISSIONER, NECESSARY OR MATERIAL TO THE MARKET CONDUCT
7 SURVEILLANCE.

8 (3) IN CONDUCTING MARKET CONDUCT SURVEILLANCE, MARKET
9 CONDUCT SURVEILLANCE PERSONNEL SHALL CONSIDER THOSE GUIDELINES
10 AND PROCEDURES SET FORTH IN THE MOST RECENT AVAILABLE EDITION OF
11 THE MARKET REGULATION HANDBOOK. THE COMMISSIONER MAY ALSO
12 EMPLOY OTHER STANDARD INSURANCE INDUSTRY GUIDELINES OR
13 PROCEDURES THE COMMISSIONER DEEMS APPROPRIATE.

14 (4) ANY PERSON WHO KNOWINGLY OR WILLFULLY TESTIFIES
15 FALSELY IN REFERENCE TO ANY MATTER MATERIAL TO ANY MARKET
16 CONDUCT SURVEILLANCE, OR WHO KNOWINGLY OR WILLFULLY MAKES ANY
17 FALSE CERTIFICATE, ENTRY, OR MEMORANDUM UPON ANY OF THE BOOKS
18 OR PAPERS OF A COMPANY OR UPON ANY STATEMENT FILED OR OFFERED
19 TO BE FILED WITH THE COMMISSIONER OR USED IN THE COURSE OF ANY
20 MARKET CONDUCT SURVEILLANCE OR INQUIRY IS GUILTY OF A
21 MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF
22 NOT MORE THAN FIVE THOUSAND DOLLARS, OR BY IMPRISONMENT IN THE
23 COUNTY JAIL FOR NOT MORE THAN THREE MONTHS, OR BY BOTH SUCH FINE
24 AND IMPRISONMENT.

25 (5) (a) EVERY COMPANY OR PERSON FROM WHOM INFORMATION IS
26 SOUGHT AND ALL OFFICERS, DIRECTORS, AND AGENTS OF THE COMPANY OR
27 PERSON SHALL PROVIDE TO THE MARKET CONDUCT SURVEILLANCE

1 PERSONNEL TIMELY, CONVENIENT, AND FREE ACCESS TO ALL BOOKS,
2 RECORDS, ACCOUNTS, PAPERS, TAPES, COMPUTER RECORDS, AND OTHER
3 DOCUMENTS RELATING TO THE PROPERTY, ASSETS, BUSINESS, AND AFFAIRS
4 OF THE COMPANY. THE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS
5 OF THE COMPANY OR PERSON SHALL FACILITATE THE MARKET CONDUCT
6 SURVEILLANCE AND AID IN THE REVIEW, EVALUATION, OR ANALYSIS TO
7 THE EXTENT IT IS IN THEIR POWER TO DO SO.

8 (b) (I) THE REFUSAL OF ANY COMPANY OR ANY OF ITS OFFICERS,
9 DIRECTORS, EMPLOYEES, OR AGENTS TO SUBMIT TO ANY TYPE OF MARKET
10 CONDUCT SURVEILLANCE OR TO COMPLY WITH ANY REASONABLE WRITTEN
11 REQUEST OF MARKET CONDUCT SURVEILLANCE PERSONNEL IS GROUNDS
12 FOR SUSPENSION, REVOCATION, DENIAL, OR NONRENEWAL OF ANY LICENSE
13 OR AUTHORITY HELD BY THE COMPANY AND SUBJECT TO THE
14 COMMISSIONER'S JURISDICTION.

15 (II) PROCEEDINGS FOR ANY SUSPENSION OR REVOCATION
16 PURSUANT TO THIS SUBSECTION (5)(b) MUST BE CONDUCTED IN
17 ACCORDANCE WITH SECTION 10-1-110.

18 (6) (a) THE COMPANY SUBJECT TO MARKET CONDUCT
19 SURVEILLANCE SHALL PAY THE REASONABLE FEES AND EXPENSES OF THE
20 MARKET CONDUCT SURVEILLANCE.

21 (b) (I) THE COMMISSIONER OR THE COMMISSIONER'S ASSISTANTS
22 SHALL CONDUCT MARKET CONDUCT SURVEILLANCE OF A DOMESTIC
23 COMPANY UNLESS THE COMMISSIONER DETERMINES THAT GOOD CAUSE
24 EXISTS TO HAVE THE MARKET CONDUCT SURVEILLANCE CONDUCTED BY
25 CONTRACT MARKET CONDUCT SURVEILLANCE PERSONNEL.

26 (II) THE COMMISSIONER SHALL ADOPT RULES FOR DETERMINING
27 WHEN CONTRACT MARKET CONDUCT SURVEILLANCE PERSONNEL MAY BE

1 USED AND THE REASONABLE FEES AND EXPENSES THAT THE COMPANY
2 SUBJECT TO THE MARKET CONDUCT SURVEILLANCE SHALL PAY. THE RULES
3 MUST INCLUDE FACTORS SUCH AS TRAVEL REQUIREMENTS, WORKLOAD
4 NEEDS, SPECIAL EXPERTISE REQUIRED FOR THE MARKET CONDUCT
5 SURVEILLANCE, AND MARKET ISSUES REQUIRING ANY UNANTICIPATED
6 MARKET CONDUCT SURVEILLANCE.

7 (c) WHEN AN INSURANCE COMPANY NOT AUTHORIZED TO DO
8 BUSINESS IN THIS STATE, A COMPANY ADJUDGED INSOLVENT, OR A
9 COMPANY WITHDRAWING FROM THIS STATE FOR ANY CAUSE NEGLECTS,
10 FAILS, OR REFUSES TO PAY THE REASONABLE FEES AND EXPENSES FOR
11 MARKET CONDUCT SURVEILLANCE AS APPROVED BY THE COMMISSIONER:

12 (I) THE STATE TREASURER SHALL PAY THE FEES AND EXPENSES
13 FROM THE GENERAL FUND UPON THE ORDER OF THE COMMISSIONER; AND

14 (II) THE AMOUNT PAID IS A FIRST LIEN UPON ALL ASSETS AND
15 PROPERTY OF THE COMPANY AND MAY BE RECOVERED BY SUIT FILED BY
16 THE ATTORNEY GENERAL ON BEHALF OF THE STATE OF COLORADO AND
17 CREDITED TO THE GENERAL FUND.

18 (7) NOTHING IN THIS PART 3 LIMITS THE COMMISSIONER'S
19 AUTHORITY TO TERMINATE OR SUSPEND ANY MARKET CONDUCT
20 SURVEILLANCE IN ORDER TO PURSUE OTHER LEGAL OR REGULATORY
21 ACTION PURSUANT TO THE INSURANCE LAWS OF THIS STATE.

22 (8) (a) WHERE THE REASONABLE AND NECESSARY COST OF ANY
23 TYPE OF MARKET CONDUCT SURVEILLANCE IS TO BE ASSESSED AGAINST
24 THE COMPANY SUBJECT TO THE MARKET CONDUCT SURVEILLANCE, THE
25 FEE MUST BE CONSISTENT WITH THE MARKET REGULATION HANDBOOK.
26 THE FEES AND EXPENSES MUST BE ITEMIZED AND MUST INCLUDE RECEIPTS
27 FOR ALL APPLICABLE EXPENSES, AND INVOICES SHALL BE PROVIDED TO THE

1 DIVISION ON AT LEAST A MONTHLY BASIS FOR REVIEW PRIOR TO
2 SUBMISSION TO THE COMPANY FOR PAYMENT. THE COMPANY SUBJECT TO
3 THE MARKET CONDUCT SURVEILLANCE SHALL PAY FEES AND EXPENSES AT
4 LEAST MONTHLY.

5 (b) THE COMMISSIONER SHALL MAINTAIN ACTIVE MANAGEMENT
6 AND OVERSIGHT OF COSTS, INCLUDING COSTS ASSOCIATED WITH THE
7 COMMISSIONER'S OWN MARKET CONDUCT SURVEILLANCE PERSONNEL AND
8 WITH RETAINING QUALIFIED CONTRACT MARKET CONDUCT SURVEILLANCE
9 PERSONNEL. TO THE EXTENT THE COMMISSIONER RETAINS OUTSIDE
10 ASSISTANCE, THE COMMISSIONER SHALL HAVE WRITTEN PROTOCOLS THAT:

11 (I) ESTABLISH AND UTILIZE A DISPUTE RESOLUTION OR
12 ARBITRATION MECHANISM TO RESOLVE CONFLICTS WITH COMPANIES
13 REGARDING FEES AND EXPENSES; AND

14 (II) REQUIRE DISCLOSURE OF THE TERMS OF THE CONTRACTS WITH
15 THE OUTSIDE CONSULTANTS THAT WILL BE USED, INCLUDING THE FEES AND
16 HOURLY RATES THAT MAY BE CHARGED.

17 (c) A COMPANY CANNOT BE REQUIRED TO REIMBURSE ANY
18 PORTION OF FEES UNDER THIS SUBSECTION (8) INCURRED BY MARKET
19 CONDUCT SURVEILLANCE PERSONNEL THAT EXCEEDS THE FEES
20 PRESCRIBED IN THE MARKET REGULATION HANDBOOK AND ANY
21 SUCCESSOR DOCUMENTS TO THAT HANDBOOK, UNLESS THE COMMISSIONER
22 DEMONSTRATES THAT THE FEES PRESCRIBED IN THE MARKET REGULATION
23 HANDBOOK ARE INADEQUATE UNDER THE CIRCUMSTANCES OF THE TYPE
24 OF MARKET CONDUCT SURVEILLANCE CONDUCTED.

25 (d) A COMPANY MAY REQUEST AN INDEPENDENT AUDIT OF THE
26 FEES AND EXPENSES CHARGED WITHIN TWELVE MONTHS AFTER THE
27 COMPLETION OF ANY TYPE OF MARKET CONDUCT SURVEILLANCE. THE

1 COMPANY IS RESPONSIBLE FOR THE COST OF THE INDEPENDENT AUDIT.
2 MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL MAINTAIN
3 DOCUMENTATION SUPPORTING THE FEES AND EXPENSES CHARGED TO THE
4 COMPANY FOR AT LEAST TWELVE MONTHS AFTER THE COMPLETION OF THE
5 MARKET CONDUCT SURVEILLANCE.

6 **10-1-305. Market conduct examinations.** (1) THE
7 COMMISSIONER MAY CONDUCT A MARKET CONDUCT EXAMINATION OF ANY
8 COMPANY AS OFTEN AS THE COMMISSIONER, IN THE COMMISSIONER'S SOLE
9 DISCRETION, DEEMS APPROPRIATE; EXCEPT THAT THE COMMISSIONER
10 SHALL RELY UPON THE STATE OF DOMICILE TO CONDUCT MARKET
11 CONDUCT EXAMINATIONS OF THOSE ELIGIBLE NONADMITTED INSURERS
12 REGULATED IN ACCORDANCE WITH ARTICLE 5 OF THIS TITLE 10.

13 (2) TO THE EXTENT PRACTICABLE, THE COMMISSIONER SHALL
14 COORDINATE A MARKET CONDUCT EXAMINATION OF A FOREIGN COMPANY
15 AUTHORIZED UNDER THIS TITLE 10 TO DO BUSINESS IN THIS STATE WITH
16 THE INSURANCE COMMISSIONER OF THE COMPANY'S STATE OF DOMICILE.

17 (3) (a) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES
18 INDICATING A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT
19 LEAST SIXTY DAYS BEFORE STARTING A MARKET CONDUCT EXAMINATION,
20 THE DIVISION SHALL NOTIFY THE COMPANY THAT A MARKET CONDUCT
21 EXAMINATION WILL BE PERFORMED.

22 (b) THE DIVISION SHALL USE THE STANDARD DATA REQUEST OR A
23 SUCCESSOR OR MODIFIED PRODUCT THAT IS SUBSTANTIALLY SIMILAR TO
24 THE STANDARD DATA REQUEST.

25 (c) AT THE SAME TIME THE NOTICE IS SENT TO THE COMPANY, THE
26 DIVISION SHALL PROVIDE NOTICE ON THE NAIC'S EXAMINATION TRACKING
27 SYSTEM OR SUCCESSOR NAIC PRODUCT THAT A MARKET CONDUCT

1 EXAMINATION HAS BEEN SCHEDULED.

2 (4) (a) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES
3 INDICATING A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT
4 LEAST THIRTY DAYS BEFORE STARTING THE MARKET CONDUCT
5 EXAMINATION, THE DIVISION SHALL OFFER, IN WRITING, TO CONDUCT A
6 PREEXAMINATION CONFERENCE WITH THE COMPANY'S EXAMINATION
7 COORDINATOR AND KEY PERSONNEL TO DISCUSS:

8 (I) EARLY RESOLUTION AND SIMPLIFICATION OF PROCEDURES;

9 (II) AVOIDANCE OF THE PRODUCTION OF UNNECESSARY OR
10 DUPLICATIVE INFORMATION; AND

11 (III) FACILITATION OF COMPLETE, ACCURATE, JUST, SPEEDY, AND
12 INEXPENSIVE DISPOSITION OF THE EXAMINATION.

13 (b) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES INDICATING
14 A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT LEAST THIRTY
15 DAYS BEFORE STARTING THE MARKET CONDUCT EXAMINATION, THE
16 DIVISION SHALL PREPARE AND PROVIDE TO THE COMPANY SUBJECT TO THE
17 EXAMINATION A WORK PLAN CONSISTING OF THE FOLLOWING:

18 (I) THE NAME AND ADDRESS OF THE COMPANY BEING EXAMINED;

19 (II) THE NAME AND CONTACT INFORMATION OF THE MARKET
20 CONDUCT SURVEILLANCE PERSONNEL WHO WILL BE CONDUCTING THE
21 EXAMINATION;

22 (III) THE TYPE OF MARKET CONDUCT EXAMINATION BEING
23 CONDUCTED;

24 (IV) THE SCOPE OF THE EXAMINATION;

25 (V) THE DATE THE EXAMINATION IS SCHEDULED TO BEGIN;

26 (VI) A TIME ESTIMATE FOR THE DURATION OF THE EXAMINATION;

27 AND

1 (VII) AN ESTIMATED COST FOR THE EXAMINATION.

2 (c) IF A MARKET CONDUCT EXAMINATION IS EXPANDED BEYOND
3 THE SCOPE PROVIDED TO THE COMPANY IN THE WORK PLAN, THE DIVISION
4 SHALL:

5 (I) PROVIDE WRITTEN NOTICE TO THE COMPANY EXPLAINING THE
6 EXTENT OF AND REASONS FOR THE EXPANSION; AND

7 (II) PROVIDE THE COMPANY WITH A REVISED WORK PLAN AS SOON
8 AS PRACTICABLE.

9 (5) BEFORE CONCLUDING A MARKET CONDUCT EXAMINATION, THE
10 DIVISION SHALL OFFER, IN WRITING, TO HOLD A PREDRAFT CONFERENCE
11 WITH THE COMPANY SUBJECT TO THE EXAMINATION AT LEAST THIRTY
12 DAYS BEFORE FILING A DRAFT REPORT. IF THE COMPANY CHOOSES TO HAVE
13 A PREDRAFT CONFERENCE, THE DIVISION SHALL DESIGN AND CONDUCT THE
14 PREDRAFT CONFERENCE IN ACCORDANCE WITH THE EXAMINATION REPORT
15 PROVISIONS OF THE MARKET REGULATION HANDBOOK TO FACILITATE:

16 (a) RESOLUTION OF OUTSTANDING ISSUES;

17 (b) DISCUSSION OF POSSIBLE CORRECTIVE ACTIONS;

18 (c) REVIEW OF THE EXAMINATION REPORT BEFORE IT IS FILED IN
19 DRAFT FORM; AND

20 (d) COMPLETE, ACCURATE, JUST, SPEEDY, AND INEXPENSIVE
21 CONCLUSION OF THE EXAMINATION.

22 (6) (a) THE DIVISION SHALL ADHERE TO THE FOLLOWING
23 PROCEDURE OR TIMELINE, UNLESS A MUTUAL AGREEMENT IS REACHED
24 WITH THE COMPANY TO MODIFY THE PROCEDURE OR TIMELINE:

25 (I) THE DIVISION SHALL DELIVER THE DRAFT REPORT TO THE
26 COMPANY WITHIN SIXTY DAYS AFTER COMPLETION OF THE MARKET
27 CONDUCT EXAMINATION, WHICH IS THE DATE WHEN THE DIVISION

1 CONFIRMS IN WRITING THAT THE EXAMINATION IS COMPLETED.

2 (II) THE COMPANY MAY RESPOND WITH WRITTEN SUBMISSIONS OR
3 REBUTTALS CHALLENGING ANY ISSUE CONTAINED IN THE DRAFT REPORT
4 WITHIN THIRTY DAYS AFTER THE DATE OF THE DRAFT REPORT. ANY ISSUE
5 IN THE DRAFT REPORT THAT IS NOT CHALLENGED BY THE COMPANY IS
6 DEEMED ACCEPTED BY THE COMPANY. THE COMPANY'S WRITTEN
7 SUBMISSIONS AND REBUTTALS MUST BE INCLUDED IN THE MARKET
8 CONDUCT SURVEILLANCE PERSONNEL'S WORK PAPERS.

9 (III) UNLESS A MUTUAL AGREEMENT IS REACHED TO EXTEND THE
10 DEADLINE, WITHIN THIRTY DAYS AFTER THE PERIOD ALLOWED FOR THE
11 COMPANY'S WRITTEN SUBMISSIONS OR REBUTTALS ENDS, THE DIVISION
12 SHALL PROVIDE TO THE COMPANY A FINAL REPORT. THE DIVISION SHALL
13 NOT INCLUDE ANY ISSUES IN THE FINAL REPORT THAT WERE NOT INCLUDED
14 IN THE DRAFT REPORT WITHOUT PROVIDING THE COMPANY AN
15 OPPORTUNITY TO SUPPLEMENT ITS SUBMISSIONS AND REBUTTALS IN ORDER
16 TO RESPOND TO ANY NEW ISSUE. THE COMPANY MUST FILE ANY
17 SUPPLEMENT TO ITS SUBMISSIONS AND REBUTTALS WITHIN FOURTEEN
18 DAYS AFTER THE DIVISION ISSUES THE FINAL REPORT.

19 (IV) WITHIN THIRTY DAYS AFTER ISSUANCE OF THE FINAL REPORT,
20 THE COMPANY MUST ACCEPT THE FINDINGS OF THE FINAL REPORT OR
21 REQUEST A WRITTEN HEARING.

22 (b) IF THE COMPANY ACCEPTS THE FINDINGS OF THE FINAL REPORT,
23 THE FOLLOWING PROCEDURES APPLY:

24 (I) THE COMMISSIONER SHALL ISSUE AN ORDER ADOPTING THE
25 FINAL REPORT AS WRITTEN OR WITH SPECIFIED MODIFICATIONS OR
26 CORRECTIONS WITHIN THIRTY DAYS AFTER THE COMPANY ACCEPTS THE
27 REPORT.

1 (II) (A) THE COMMISSIONER SHALL INCLUDE WITH AN ORDER
2 ISSUED PURSUANT TO SUBSECTION (6)(b)(I) OF THIS SECTION FINDINGS
3 AND CONCLUSIONS RESULTING FROM THE COMMISSIONER'S
4 CONSIDERATION AND REVIEW OF THE FINAL REPORT, RELEVANT MARKET
5 CONDUCT SURVEILLANCE PERSONNEL WORK PAPERS, AND ANY WRITTEN
6 SUBMISSIONS OR REBUTTALS.

7 (B) AN ORDER ISSUED PURSUANT TO SUBSECTION (6)(b)(I) OF THIS
8 SECTION IS A FINAL AGENCY ACTION AND SHALL BE SERVED UPON THE
9 COMPANY BY CERTIFIED MAIL TOGETHER WITH A COPY OF THE ADOPTED
10 FINAL REPORT. WITHIN SIXTY DAYS AFTER ISSUANCE OF THE ADOPTED
11 FINAL REPORT, THE COMPANY SHALL FILE AFFIDAVITS EXECUTED BY EACH
12 OF ITS DIRECTORS STATING UNDER OATH THAT THE DIRECTORS HAVE
13 RECEIVED A COPY OF THE FINAL REPORT AND RELATED ORDERS.

14 (III) NOTWITHSTANDING THE REQUIREMENTS OF SECTION
15 10-1-127, IF THE FINAL AGENCY ORDER MODIFIES OR CORRECTS THE FINAL
16 REPORT ACCEPTED BY THE COMPANY, THE COMPANY MAY APPEAL THE
17 MODIFIED OR CORRECTED PORTIONS OF THE FINAL AGENCY ORDER,
18 INCLUDING THE PENALTY OR ALL OR PART OF ANY FINE OR CIVIL PENALTY
19 IMPOSED IN THE ORDER, TO THE DISTRICT COURT PURSUANT TO SECTION
20 24-4-106. IN THE ABSENCE OF ANY MODIFICATION OR CORRECTIONS TO
21 THE FINAL REPORT ACCEPTED BY THE COMPANY, THE COMPANY DOES NOT
22 HAVE A RIGHT TO JUDICIAL REVIEW OF THE FINAL AGENCY ACTION
23 ADOPTED BY THE COMMISSIONER EXCEPT FOR THE RIGHT TO APPEAL THE
24 PENALTY OR ALL OR PART OF ANY FINE OR CIVIL PENALTY IMPOSED IN THE
25 ORDER TO THE DISTRICT COURT PURSUANT TO SECTION 24-4-106.

26 (c) IF THE COMPANY REQUESTS A WRITTEN HEARING, THE
27 FOLLOWING PROCEDURES APPLY:

1 (I) THE COMPANY MUST REQUEST THE WRITTEN HEARING IN
2 WRITING AND MUST SPECIFY THE ISSUES IN THE FINAL REPORT THAT THE
3 COMPANY IS CHALLENGING. THE COMPANY IS LIMITED TO CHALLENGING
4 THE ISSUES THAT WERE PREVIOUSLY CHALLENGED IN THE COMPANY'S
5 WRITTEN SUBMISSION AND REBUTTAL OR SUPPLEMENTAL SUBMISSION AND
6 REBUTTAL AS PROVIDED PURSUANT TO SUBSECTIONS (6)(a)(II) AND
7 (6)(a)(III) OF THIS SECTION.

8 (II) THE HEARING SHALL BE CONDUCTED BY WRITTEN ARGUMENTS
9 SUBMITTED TO THE COMMISSIONER.

10 (III) DISCOVERY IS LIMITED TO THE MARKET CONDUCT
11 SURVEILLANCE PERSONNEL'S WORK PAPERS THAT ARE RELEVANT TO THE
12 ISSUES THE COMPANY IS CHALLENGING. THE RELEVANT MARKET CONDUCT
13 SURVEILLANCE PERSONNEL'S WORK PAPERS ARE DEEMED ADMITTED AND
14 INCLUDED IN THE RECORD. NO OTHER FORMS OF DISCOVERY, INCLUDING
15 DEPOSITIONS AND INTERROGATORIES, ARE ALLOWED, EXCEPT UPON THE
16 WRITTEN AGREEMENT OF THE COMPANY AND THE DIVISION.

17 (IV) ONLY THE COMPANY AND THE DIVISION MAY SUBMIT WRITTEN
18 ARGUMENTS.

19 (V) THE COMPANY MUST SUBMIT ITS WRITTEN ARGUMENT WITHIN
20 THIRTY DAYS AFTER IT REQUESTS THE HEARING.

21 (VI) THE DIVISION SHALL SUBMIT ITS WRITTEN RESPONSE WITHIN
22 THIRTY DAYS AFTER THE END OF THE PERIOD ALLOWED FOR THE COMPANY
23 TO SUBMIT ITS WRITTEN ARGUMENT.

24 (VII) THE COMMISSIONER SHALL ISSUE A DECISION ACCOMPANIED
25 BY FINDINGS AND CONCLUSIONS RESULTING FROM THE COMMISSIONER'S
26 CONSIDERATION AND REVIEW OF THE WRITTEN ARGUMENTS, THE FINAL
27 REPORT, RELEVANT MARKET CONDUCT SURVEILLANCE PERSONNEL WORK

1 PAPERS, AND ANY WRITTEN SUBMISSIONS OR REBUTTALS. THE
2 COMMISSIONER'S ORDER IS A FINAL AGENCY ACTION AND SHALL BE SERVED
3 UPON THE COMPANY BY CERTIFIED MAIL TOGETHER WITH A COPY OF THE
4 FINAL REPORT. UNLESS THE EFFECTIVE DATE OF THE FINAL AGENCY ORDER
5 IS POSTPONED PURSUANT TO SECTION 24-4-106 (5), WITHIN SIXTY DAYS
6 AFTER ISSUANCE OF THE FINAL AGENCY ORDER, THE COMPANY SHALL FILE
7 AFFIDAVITS EXECUTED BY EACH OF ITS DIRECTORS STATING UNDER OATH
8 THAT THE DIRECTORS HAVE RECEIVED A COPY OF THE FINAL REPORT AND
9 RELATED ORDERS.

10 (VIII) ANY PORTION OF THE FINAL REPORT THAT IS NOT OR
11 CANNOT BE CHALLENGED BY THE COMPANY IS INCORPORATED INTO THE
12 DECISION OF THE COMMISSIONER.

13 (IX) NOTWITHSTANDING THE REQUIREMENTS OF SECTION
14 10-1-127, THE COMMISSIONER'S DECISION IS A FINAL AGENCY ACTION
15 APPEALABLE PURSUANT TO SECTION 24-4-106.

16 (7) FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE
17 COMMISSIONER'S FINAL AGENCY ACTION ARE PRIMA FACIE EVIDENCE IN
18 ANY LEGAL OR REGULATORY ACTION.

19 (8) (a) THE COMMISSIONER SHALL CONTINUE TO HOLD THE
20 CONTENT OF ANY FINAL AGENCY ACTION OF A MARKET CONDUCT
21 EXAMINATION AS PRIVATE AND CONFIDENTIAL FOR A PERIOD OF
22 FORTY-NINE DAYS AFTER THE FINAL AGENCY ACTION. AFTER THE
23 FORTY-NINE-DAY PERIOD EXPIRES, THE COMMISSIONER SHALL OPEN THE
24 FINAL AGENCY ACTION FOR PUBLIC INSPECTION IF A COURT OF COMPETENT
25 JURISDICTION HAS NOT STAYED ITS PUBLICATION.

26 (b) NOTHING IN THIS PART 3 PREVENTS THE COMMISSIONER FROM
27 DISCLOSING THE CONTENT OF AN EXAMINATION REPORT, PRELIMINARY

1 EXAMINATION REPORT, OR RESULTS, OR ANY MATTER RELATING TO A
2 REPORT OR RESULTS, TO THE DIVISION OR TO THE INSURANCE DIVISION OF
3 ANY OTHER STATE OR AGENCY OR OFFICE OF THE FEDERAL GOVERNMENT
4 AT ANY TIME IF THE DIVISION, AGENCY, OR OFFICE RECEIVING THE REPORT
5 OR RELATED MATTERS AGREES AND HAS THE LEGAL AUTHORITY TO HOLD
6 IT CONFIDENTIAL IN A MANNER CONSISTENT WITH THIS PART 3.

7 **10-1-306. Market conduct surveillance personnel.** (1) MARKET
8 CONDUCT SURVEILLANCE PERSONNEL MUST BE QUALIFIED BY EDUCATION,
9 EXPERIENCE, AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS.
10 THE COMMISSIONER MAY SUPPLEMENT THE IN-HOUSE MARKET CONDUCT
11 SURVEILLANCE STAFF WITH QUALIFIED OUTSIDE PROFESSIONAL
12 ASSISTANCE IF THE COMMISSIONER DETERMINES THAT OUTSIDE
13 ASSISTANCE IS NECESSARY.

14 (2) THE COMMISSIONER SHALL NOT APPOINT MARKET CONDUCT
15 SURVEILLANCE PERSONNEL WHO, EITHER DIRECTLY OR INDIRECTLY, HAVE
16 A CONFLICT OF INTEREST OR ARE AFFILIATED WITH THE MANAGEMENT OF
17 OR OWN A PECUNIARY INTEREST IN ANY PERSON SUBJECT TO ANY TYPE OF
18 MARKET CONDUCT SURVEILLANCE UNDER THIS PART 3; EXCEPT THAT THIS
19 SECTION DOES NOT PRECLUDE MARKET CONDUCT SURVEILLANCE
20 PERSONNEL FROM BEING:

21 (a) A POLICYHOLDER OR CLAIMANT UNDER AN INSURANCE POLICY;

22 (b) A GRANTOR OF A MORTGAGE OR SIMILAR INSTRUMENT ON THE
23 MARKET CONDUCT SURVEILLANCE EMPLOYEE'S RESIDENCE TO A
24 REGULATED ENTITY IF DONE UNDER CUSTOMARY TERMS AND IN THE
25 ORDINARY COURSE OF BUSINESS;

26 (c) AN INVESTMENT OWNER IN SHARES OF REGULATED DIVERSIFIED
27 INVESTMENT COMPANIES; OR

1 (d) A SETTLOR OR BENEFICIARY OF A BLIND TRUST INTO WHICH
2 ANY OTHERWISE IMPERMISSIBLE HOLDINGS HAVE BEEN PLACED.

3 (3) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
4 CONTRARY, THE COMMISSIONER MAY RETAIN FROM TIME TO TIME, ON AN
5 INDIVIDUAL BASIS, QUALIFIED ACTUARIES, CERTIFIED PUBLIC
6 ACCOUNTANTS, OR SIMILAR INDIVIDUALS WHO ARE INDEPENDENTLY
7 PRACTICING THEIR PROFESSIONS EVEN THOUGH THOSE INDIVIDUALS MAY
8 FROM TIME TO TIME BE SIMILARLY EMPLOYED OR RETAINED BY COMPANIES
9 SUBJECT TO MARKET CONDUCT SURVEILLANCE UNDER THIS PART 3.

10 **10-1-307. Immunity from liability - prohibited activity.** (1) A
11 CAUSE OF ACTION DOES NOT ARISE, AND LIABILITY SHALL NOT BE IMPOSED,
12 AGAINST THE COMMISSIONER, THE COMMISSIONER'S AUTHORIZED
13 REPRESENTATIVES, OR ANY MARKET CONDUCT SURVEILLANCE PERSONNEL
14 EMPLOYED OR APPOINTED BY THE COMMISSIONER FOR ANY STATEMENTS
15 MADE OR CONDUCT PERFORMED IN GOOD FAITH WHILE CARRYING OUT THE
16 PROVISIONS OF THIS PART 3.

17 (2) A CAUSE OF ACTION DOES NOT ARISE, AND LIABILITY SHALL
18 NOT BE IMPOSED, AGAINST ANY PERSON FOR COMMUNICATING OR
19 DELIVERING INFORMATION OR DATA TO THE COMMISSIONER, THE
20 COMMISSIONER'S AUTHORIZED REPRESENTATIVE, OR ANY MARKET
21 CONDUCT SURVEILLANCE PERSONNEL PURSUANT TO A MARKET CONDUCT
22 SURVEILLANCE PERFORMED UNDER THIS PART 3, IF THE COMMUNICATION
23 OR DELIVERY WAS PERFORMED IN GOOD FAITH AND WITHOUT FRAUDULENT
24 INTENT OR THE INTENT TO DECEIVE.

25 (3) THIS SECTION DOES NOT ABROGATE OR MODIFY ANY
26 COMMON-LAW OR STATUTORY PRIVILEGE OR IMMUNITY ENJOYED BY ANY
27 PERSON IDENTIFIED IN SUBSECTION (1) OF THIS SECTION.

1 (4) A PERSON IDENTIFIED IN SUBSECTION (1) OF THIS SECTION IS
2 ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS IF THE PERSON IS
3 THE PREVAILING PARTY IN A CIVIL ACTION FOR LIBEL, SLANDER, OR ANY
4 OTHER RELEVANT TORT ARISING OUT OF ACTIVITIES IN CARRYING OUT THE
5 PROVISIONS OF THIS PART 3, AND THE PARTY BRINGING THE ACTION WAS
6 NOT SUBSTANTIALLY JUSTIFIED IN BRINGING THE ACTION. FOR PURPOSES
7 OF THIS SECTION, A PROCEEDING IS "SUBSTANTIALLY JUSTIFIED" IF IT HAD
8 A REASONABLE BASIS IN LAW OR FACT AT THE TIME THAT IT WAS
9 INITIATED.

10 (5) (a) A COMPANY SHALL NOT TAKE ANY RETALIATORY
11 PERSONNEL ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE
12 PROVIDES INFORMATION PURSUANT TO ANY TYPE OF MARKET CONDUCT
13 SURVEILLANCE EXAMINING THE PRACTICES OF THE COMPANY.

14 (b) AN EMPLOYEE WHO HAS BEEN THE SUBJECT OF A RETALIATORY
15 PERSONNEL ACTION IN VIOLATION OF SUBSECTION (5)(a) OF THIS SECTION
16 MAY INSTITUTE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION
17 FOR RELIEF WITHIN ONE YEAR AFTER LEARNING OF THE ALLEGED
18 RETALIATORY ACTION.

19 (c) A COURT OF COMPETENT JURISDICTION MAY ORDER RELIEF AS
20 FOLLOWS:

21 (I) REINSTATEMENT OF THE EMPLOYEE TO THE SAME POSITION
22 HELD BEFORE THE RETALIATORY PERSONNEL ACTION OR TO AN
23 EQUIVALENT POSITION;

24 (II) REINSTATEMENT OF FULL BENEFITS AND SENIORITY RIGHTS;
25 AND

26 (III) COMPENSATION FOR LOST WAGES AND BENEFITS.

27 (d) UPON A DETERMINATION THAT A COMPANY HAS TAKEN A

1 RETALIATORY PERSONNEL ACTION, THE COURT MAY AWARD COSTS OF THE
2 ACTION TOGETHER WITH REASONABLE ATTORNEY FEES.

3 **10-1-308. Rules.** IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
4 THE COMMISSIONER MAY PROMULGATE REASONABLE RULES THAT ARE
5 NECESSARY OR PROPER FOR IMPLEMENTING AND ADMINISTERING THIS
6 PART 3, INCLUDING RULES NECESSARY TO ALIGN STATE LAW WITH THE
7 REQUIREMENTS FOR ACCREDITATION SET FORTH BY THE NAIC.

8 **10-1-309. Confidentiality requirements.** (1) (a) MARKET
9 CONDUCT SURVEILLANCE PERSONNEL HAVE FREE AND FULL ACCESS TO THE
10 FOLLOWING DOCUMENTS OF AND PERSONS ASSOCIATED WITH THE
11 COMPANY DURING REGULAR BUSINESS HOURS:

12 (I) BOOKS;

13 (II) RECORDS, INCLUDING ANY SELF-EVALUATION OR VOLUNTARY
14 COMPLIANCE PROGRAM DOCUMENTS;

15 (III) EMPLOYEES;

16 (IV) OFFICERS; AND

17 (V) DIRECTORS.

18 (b) UPON REQUEST OF MARKET CONDUCT SURVEILLANCE
19 PERSONNEL, A COMPANY UTILIZING A THIRD-PARTY MODEL OR PRODUCT
20 FOR ANY OF THE ACTIVITIES BEING REVIEWED SHALL MAKE THE DETAILS
21 OF THE MODELS OR PRODUCTS AVAILABLE TO THE PERSONNEL.

22 (c) (I) THE COMMISSIONER AND ANY OTHER PERSON IN THE COURSE
23 OF MARKET CONDUCT SURVEILLANCE SHALL KEEP CONFIDENTIAL ALL
24 DOCUMENTS, INCLUDING WORKING PAPERS, THIRD-PARTY MODELS OR
25 PRODUCTS, COMPLAINT LOGS, AND COPIES OF ANY DOCUMENTS CREATED,
26 PRODUCED, OBTAINED BY, OR DISCLOSED TO THE COMMISSIONER, MARKET
27 CONDUCT SURVEILLANCE PERSONNEL, OR ANY OTHER PERSON IN THE

1 COURSE OF MARKET CONDUCT SURVEILLANCE CONDUCTED PURSUANT TO
2 THIS PART 3, AND ALL DOCUMENTS OBTAINED BY THE NAIC AS A RESULT
3 OF THIS PART 3. THE DOCUMENTS REMAIN CONFIDENTIAL BEYOND THE
4 TERMINATION OF THE MARKET CONDUCT SURVEILLANCE, ARE NOT
5 SUBJECT TO SUBPOENA, AND MUST NOT BE MADE PUBLIC AT ANY TIME OR
6 USED BY THE COMMISSIONER OR ANY OTHER PERSON, EXCEPT AS PROVIDED
7 IN SUBSECTIONS (2), (3), AND (5) OF THIS SECTION AND SECTION 10-1-312.

8 (II) THE COMMISSIONER, THE DIVISION, AND ANY OTHER PERSON
9 IN THE COURSE OF MARKET CONDUCT SURVEILLANCE SHALL KEEP
10 CONFIDENTIAL ANY SELF-EVALUATION OR VOLUNTARY COMPLIANCE
11 PROGRAM DOCUMENTS DISCLOSED TO THE COMMISSIONER OR OTHER
12 PERSON BY A COMPANY AND THE DATA COLLECTED VIA THE NAIC
13 MARKET CONDUCT ANNUAL STATEMENT. THE DOCUMENTS ARE NOT
14 SUBJECT TO SUBPOENA AND SHALL NOT BE MADE PUBLIC OR USED BY THE
15 COMMISSIONER OR ANY OTHER PERSON, EXCEPT AS PROVIDED IN
16 SUBSECTIONS (2), (3), AND (5) OF THIS SECTION AND SECTION 10-1-312.

17 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, AND
18 CONSISTENT WITH SUBSECTION (3) OF THIS SECTION, IN ORDER TO ASSIST
19 IN THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE
20 COMMISSIONER MAY:

21 (a) SHARE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR OTHER
22 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED
23 DOCUMENTS, MATERIALS, OR INFORMATION SPECIFIED IN SUBSECTION (1)
24 OF THIS SECTION, WITH OTHER STATE, FEDERAL, AND INTERNATIONAL
25 REGULATORY AGENCIES AND LAW ENFORCEMENT AUTHORITIES AND THE
26 NAIC, ITS AFFILIATES, AND SUBSIDIARIES, IF THE RECIPIENT AGREES TO
27 AND HAS THE LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY AND

1 PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL, COMMUNICATION, OR
2 OTHER INFORMATION;

3 (b) RECEIVE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR
4 INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED
5 DOCUMENTS, MATERIALS, OR INFORMATION, FROM THE NAIC AND ITS
6 AFFILIATES OR SUBSIDIARIES, AND FROM REGULATORY AND LAW
7 ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS,
8 AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
9 MATERIAL, COMMUNICATION, OR INFORMATION RECEIVED WITH NOTICE OR
10 THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE
11 LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT,
12 MATERIAL, COMMUNICATION, OR INFORMATION; AND

13 (c) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE
14 OF INFORMATION CONSISTENT WITH THIS SECTION.

15 (3) NOTHING IN THIS PART 3 LIMITS:

16 (a) THE COMMISSIONER'S AUTHORITY TO USE, IF CONSISTENT WITH
17 SECTION 10-3-414, ANY FINAL OR PRELIMINARY EXAMINATION REPORT,
18 ANY MARKET CONDUCT SURVEILLANCE OR COMPANY WORK PAPERS OR
19 OTHER DOCUMENTS, OR ANY OTHER INFORMATION DISCOVERED OR
20 DEVELOPED DURING THE COURSE OF ANY MARKET CONDUCT
21 SURVEILLANCE, IN THE FURTHERANCE OF ANY LEGAL OR REGULATORY
22 ACTION INITIATED BY THE COMMISSIONER THAT THE COMMISSIONER MAY,
23 IN THE COMMISSIONER'S SOLE DISCRETION, DEEM APPROPRIATE; OR

24 (b) THE ABILITY OF A COMPANY TO CONDUCT DISCOVERY IN
25 ACCORDANCE WITH SECTION 10-1-305 (6)(c)(III).

26 (4) DISCLOSURE TO THE COMMISSIONER OF DOCUMENTS,
27 MATERIALS, COMMUNICATIONS, OR INFORMATION REQUIRED AS PART OF

1 ANY TYPE OF MARKET CONDUCT SURVEILLANCE DOES NOT WAIVE ANY
2 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE
3 DOCUMENTS, MATERIALS, COMMUNICATIONS, OR INFORMATION.

4 (5) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENTS IN
5 SUBSECTION (1)(c) OF THIS SECTION, WHEN THE COMMISSIONER PERFORMS
6 ANY TYPE OF MARKET CONDUCT SURVEILLANCE THAT DOES NOT RISE TO
7 THE LEVEL OF A MARKET CONDUCT EXAMINATION, THE COMMISSIONER
8 MAY MAKE THE FINAL RESULTS OF THE MARKET CONDUCT SURVEILLANCE,
9 IN AN AGGREGATED FORMAT, AVAILABLE FOR PUBLIC INSPECTION IN A
10 MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

11 **10-1-310. Fines and penalties.** (1) (a) EXCEPT AS PROVIDED IN
12 SUBSECTION (1)(b) OF THIS SECTION, AS A RESULT OF ANY MARKET
13 CONDUCT SURVEILLANCE, THE COMMISSIONER MAY ORDER A MONETARY
14 PENALTY OF UP TO THREE THOUSAND DOLLARS FOR EVERY ACT IN
15 VIOLATION OF ANY LAW, RULE, OR PRIOR LAWFUL ORDER OF THE
16 COMMISSIONER, NOT TO EXCEED AN AGGREGATE PENALTY OF THIRTY
17 THOUSAND DOLLARS FOR EVERY ACT OR VIOLATION.

18 (b) IF THE COMPANY KNEW OR REASONABLY SHOULD HAVE KNOWN
19 THAT ITS CONDUCT WAS IN VIOLATION OF ANY LAW, RULE, OR PRIOR
20 LAWFUL ORDER OF THE COMMISSIONER, THE COMMISSIONER MAY ORDER
21 A PENALTY OF UP TO THIRTY THOUSAND DOLLARS FOR EVERY ACT OR
22 VIOLATION, NOT TO EXCEED AN AGGREGATE PENALTY OF SEVEN HUNDRED
23 FIFTY THOUSAND DOLLARS IN ANY ONE CALENDAR YEAR.

24 (2) THE COMMISSIONER SHALL ENSURE THAT FINES AND PENALTIES
25 LEVIED AS A RESULT OF MARKET CONDUCT SURVEILLANCE OR OTHER
26 ACTION ENFORCING THIS PART 3 ARE CONSISTENT, REASONABLE, AND
27 JUSTIFIED.

1 (3) WHEN DETERMINING THE APPROPRIATE CIVIL PENALTY FOR A
2 COMPANY AND WHETHER TO STAY ANY PORTION OF THE CIVIL PENALTY,
3 THE COMMISSIONER MAY CONSIDER, IN HIS OR HER SOLE DISCRETION:

4 (a) ACTIONS TAKEN BY THE COMPANY TO MAINTAIN MEMBERSHIP
5 IN, AND COMPLY WITH THE STANDARDS OF, BEST-PRACTICE
6 ORGANIZATIONS THAT PROMOTE HIGH ETHICAL STANDARDS OF CONDUCT
7 IN THE MARKETPLACE;

8 (b) THE EXTENT TO WHICH THE COMPANY MAINTAINS
9 REGULATORY COMPLIANCE PROGRAMS TO SELF-ASSESS, SELF-REPORT, AND
10 REMEDIATE PROBLEMS DETECTED; AND

11 (c) REGULATORY COMPLIANCE PROGRAMS THAT A COMPANY HAS
12 INSTITUTED VOLUNTARILY PRIOR TO OR DURING THE PENDENCY OF ANY
13 MARKET CONDUCT SURVEILLANCE IN ORDER TO REMEDY VIOLATIONS.

14 (4) IF THE COMMISSIONER STAYS ANY PORTION OF THE CIVIL
15 PENALTY, THE COMMISSIONER SHALL REINSTATE THE FULL CIVIL PENALTY,
16 AND MAY IMPOSE ADDITIONAL PENALTIES, IF THE COMPANY FAILS TO
17 REMEDY THE VIOLATIONS.

18 **10-1-311. Participation in national market conduct databases.**

19 (1) THE COMMISSIONER SHALL REPORT MARKET DATA TO THE NAIC'S
20 MARKET INFORMATION SYSTEMS, INCLUDING THE COMPLAINT DATABASE
21 SYSTEM, THE EXAMINATION TRACKING SYSTEM, AND THE REGULATORY
22 INFORMATION RETRIEVAL SYSTEM, OR OTHER SUCCESSOR NAIC PRODUCTS
23 AS DETERMINED BY THE COMMISSIONER.

24 (2) (a) THE COMMISSIONER SHALL REPORT COMPLAINTS TO THE
25 NAIC COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT, IN
26 ACCORDANCE WITH NAIC GUIDELINES. HOWEVER, BEFORE PUBLICATION
27 OF COMPANY-SPECIFIC COMPLAINT INFORMATION BY THE COMMISSIONER,

1 INSURANCE INDUSTRY PERSONNEL SHALL BE GIVEN THE OPPORTUNITY TO
2 REVIEW COLORADO-SPECIFIC COMPLAINTS ASSIGNED TO THEIR COMPANY
3 IN THE COMMISSIONER'S COMPLAINTS DATABASE AND REQUEST THAT
4 CORRECTIONS BE MADE TO THE DATA. THE COMMISSIONER SHALL REVIEW
5 COMPANY OBJECTIONS TO ASSIGNED COMPLAINTS BEFORE PUBLISHING
6 COMPANY-SPECIFIC COMPLAINTS INFORMATION AND SHALL MAKE
7 CORRECTIONS TO THE COMMISSIONER'S COMPLAINTS DATABASE WHEN
8 APPROPRIATE. IF THE COMMISSIONER MAKES CORRECTIONS TO ITS
9 COMPLAINTS DATABASE BASED ON ERRORS IDENTIFIED BY A COMPANY,
10 THE COMMISSIONER SHALL SEND CORRECTED DATA TO THE NAIC
11 COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT.

12 (b) THE COMMISSIONER SHALL ENSURE THAT COMPANIES HAVE
13 UNTIL AT LEAST JANUARY 31 TO REVIEW COMPLAINTS DATA FOR THE
14 IMMEDIATELY PRECEDING CALENDAR YEAR. IN ORDER FOR A COMPANY'S
15 OBJECTIONS TO ITS COMPLAINTS DATA INFORMATION TO BE CONSIDERED,
16 THE COMPANY MUST REVIEW AND REQUEST ANY CORRECTIONS TO THE
17 PRIOR CALENDAR YEAR'S COMPLAINTS DATA NO LATER THAN JANUARY 31.

18 (3) INFORMATION MAINTAINED BY THE COMMISSIONER SHALL BE
19 COMPILED IN A MANNER THAT MEETS THE REQUIREMENTS OF THE NAIC.

20 **10-1-312. Coordination with other states through NAIC.**

21 (1) THE COMMISSIONER MAY SHARE INFORMATION AND COORDINATE THE
22 COMMISSIONER'S MARKET SURVEILLANCE EFFORTS WITH OTHER STATES
23 THROUGH THE NAIC.

24 (2) CONSISTENT WITH SECTION 10-1-309, IN ORDER TO ASSIST IN
25 THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE COMMISSIONER
26 MAY:

27 (a) SHARE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR OTHER

1 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED
2 DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SECTION 10-1-309
3 (1), WITH OTHER STATE, FEDERAL, AND INTERNATIONAL REGULATORY
4 AGENCIES AND LAW ENFORCEMENT AUTHORITIES AND THE NAIC, ITS
5 AFFILIATES, AND SUBSIDIARIES, IF THE RECIPIENT AGREES TO AND HAS THE
6 LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED
7 STATUS OF THE DOCUMENT, MATERIAL, COMMUNICATION, OR OTHER
8 INFORMATION;

9 (b) RECEIVE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR
10 INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED
11 DOCUMENTS, MATERIALS, OR INFORMATION, FROM THE NAIC AND ITS
12 AFFILIATES OR SUBSIDIARIES, AND FROM REGULATORY AND LAW
13 ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS,
14 AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT,
15 MATERIAL, COMMUNICATION, OR INFORMATION RECEIVED WITH NOTICE OR
16 THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE
17 LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT,
18 MATERIAL, COMMUNICATION, OR INFORMATION; AND

19 (c) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE
20 OF INFORMATION CONSISTENT WITH THIS SECTION.

21 **SECTION 11.** In Colorado Revised Statutes, 10-2-707, **add** (3)
22 as follows:

23 **10-2-707. Business practices - price limits - collateral.**
24 (3) SUBJECT TO SECTION 16-4-110 (1)(c) AND (2), A BAIL PREMIUM IS
25 EARNED IN ITS ENTIRETY BY A COMPENSATED SURETY UPON THE
26 DEFENDANT'S RELEASE FROM CUSTODY.

27 **SECTION 12.** In Colorado Revised Statutes, 8-44-204, **amend**

1 (4) as follows:

2 **8-44-204. Public entities - self-insurance authorized for**
3 **workers' compensation - pooled insurance.** (4) Any self-insurance
4 pool authorized by subsection (3) of this section shall not be construed to
5 be an insurance company nor otherwise subject to ~~the provisions of the~~
6 laws of this state regulating insurance or insurance companies; except that
7 the pool shall comply with the applicable provisions of sections 10-1-203
8 and 10-1-204 (1) to (5). ~~and (10), C.R.S.~~

9 **SECTION 13.** In Colorado Revised Statutes, 8-44-205, **amend**
10 (3) as follows:

11 **8-44-205. Employers - self-insurance pools authorized for**
12 **workers' compensation.** (3) Any self-insurance pool authorized by
13 subsection (2) of this section shall not be construed to be an insurance
14 company nor otherwise subject to ~~the provisions of the laws of this state~~
15 regulating insurance or insurance companies; except that the pool shall
16 comply with the applicable provisions of sections 10-1-203 and 10-1-204
17 (1) to (5), ~~and (10), C.R.S.~~, and ~~shall be~~ IS subject to proceedings
18 authorized by part 5 of article 3 of title 10. ~~C.R.S.~~

19 **SECTION 14.** In Colorado Revised Statutes, 10-1-103, **amend**
20 (5) as follows:

21 **10-1-103. Division of insurance - subject to repeal - repeal of**
22 **functions.** (5) The office of the division of insurance is a public office.
23 EXCEPT AS OTHERWISE PROVIDED BY LAW, the documents, materials, and
24 information of the office or on file in the office are public records of this
25 state, and information shall be furnished to anyone applying for the
26 information; except that documents, materials, and information provided
27 by the regulatory officials of any state, federal agency, or foreign country

1 and by the national association of insurance commissioners shall be given
2 confidential treatment if such documents, materials, and information are
3 treated as confidential in such other state or foreign country or by such
4 other federal agency or the national association of insurance
5 commissioners. Notwithstanding any provision of this subsection (5) to
6 the contrary, the commissioner or the commissioner's designee may share
7 otherwise confidential documents, materials, and information with
8 regulatory officials of any state, federal agency, or foreign country and
9 with the national association of insurance commissioners if the
10 association or the regulatory official of the other state, federal agency, or
11 foreign country agrees and has the legal authority to maintain the same
12 level of confidentiality as applies to the documents, materials, and
13 information under Colorado law.

14 **SECTION 15.** In Colorado Revised Statutes, 24-10-115.5,
15 **amend** (2) as follows:

16 **24-10-115.5. Authority for public entities to pool insurance**
17 **coverage.** (2) Any self-insurance pool authorized by subsection (1) of
18 this section shall not be construed to be an insurance company nor
19 otherwise subject to ~~the provisions of~~ the laws of this state regulating
20 insurance or insurance companies; except that the pool shall comply with
21 the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5).
22 ~~and (10), C.R.S.~~

23 **SECTION 16.** In Colorado Revised Statutes, 29-13-102, **amend**
24 (2) as follows:

25 **29-13-102. Authority for units of local government to pool**
26 **insurance coverage.** (2) Any self-insurance pool authorized by
27 subsection (1) of this section shall not be construed to be an insurance

1 company nor otherwise subject to ~~the provisions~~ of the laws of this state
2 regulating insurance or insurance companies; except that the pool shall
3 comply with the applicable provisions of sections 10-1-203 and 10-1-204
4 (1) to (5). ~~and (10), C.R.S.~~

5 **SECTION 17. Act subject to petition - effective date.** This act
6 takes effect January 1, 2018; except that, if a referendum petition is filed
7 pursuant to section 1 (3) of article V of the state constitution against this
8 act or an item, section, or part of this act within the ninety-day period
9 after final adjournment of the general assembly, then the act, item,
10 section, or part will not take effect unless approved by the people at the
11 general election to be held in November 2018 and, in such case, will take
12 effect on the date of the official declaration of the vote thereon by the
13 governor.