

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0992.01 Christy Chase x2008

**HOUSE BILL 17-1231**

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**HOUSE SPONSORSHIP**

**Arndt and Lawrence,**

**SENATE SPONSORSHIP**

**Tate and Smallwood,**

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**House Committees**  
Business Affairs and Labor

**Senate Committees**  
State, Veterans, & Military Affairs

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**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.**

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**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.*

HOUSE  
3rd Reading Unamended  
April 4, 2017

HOUSE  
Amended 2nd Reading  
April 3, 2017

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.

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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 [REDACTED] INVESTIGATION TO BE  
9 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~~ matters 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) (a) SUBJECT TO  
7 SUBSECTION (1)(b) OF THIS SECTION, THE COMMISSIONER MAY CONDUCT  
8 A MARKET CONDUCT EXAMINATION OF ANY COMPANY AS OFTEN AS THE  
9 COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION, DEEMS  
10 APPROPRIATE; EXCEPT THAT THE COMMISSIONER SHALL RELY UPON THE  
11 STATE OF DOMICILE TO CONDUCT MARKET CONDUCT EXAMINATIONS OF  
12 THOSE ELIGIBLE NONADMITTED INSURERS REGULATED IN ACCORDANCE  
13 WITH ARTICLE 5 OF THIS TITLE 10.

14 (b) THE COMMISSIONER SHALL FOCUS A MARKET CONDUCT  
15 EXAMINATION OF A COMPANY ON THE COMPANY'S GENERAL BUSINESS  
16 PRACTICES AND COMPLIANCE ACTIVITIES RATHER THAN INITIATING A  
17 MARKET CONDUCT EXAMINATION IN RESPONSE TO CLEARLY INFREQUENT  
18 OR UNINTENTIONAL RANDOM ERRORS THAT DO NOT CAUSE SIGNIFICANT  
19 CONSUMER HARM.

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

24 (3) (a) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES  
25 INDICATING A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT  
26 LEAST SIXTY DAYS BEFORE STARTING A MARKET CONDUCT EXAMINATION,  
27 THE DIVISION SHALL NOTIFY THE COMPANY THAT A MARKET CONDUCT

1 EXAMINATION WILL BE PERFORMED.

2 (b) THE DIVISION SHALL USE THE STANDARD DATA REQUEST OR A  
3 SUCCESSOR OR MODIFIED PRODUCT THAT IS SUBSTANTIALLY SIMILAR TO  
4 THE STANDARD DATA REQUEST.

5 (c) AT THE SAME TIME THE NOTICE IS SENT TO THE COMPANY, THE  
6 DIVISION SHALL PROVIDE NOTICE ON THE NAIC'S EXAMINATION TRACKING  
7 SYSTEM OR SUCCESSOR NAIC PRODUCT THAT A MARKET CONDUCT  
8 EXAMINATION HAS BEEN SCHEDULED.

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

15 (I) EARLY RESOLUTION AND SIMPLIFICATION OF PROCEDURES;

16 (II) AVOIDANCE OF THE PRODUCTION OF UNNECESSARY OR  
17 DUPLICATIVE INFORMATION; AND

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

20 (b) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES INDICATING  
21 A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT LEAST THIRTY  
22 DAYS BEFORE STARTING THE MARKET CONDUCT EXAMINATION, THE  
23 DIVISION SHALL PREPARE AND PROVIDE TO THE COMPANY SUBJECT TO THE  
24 EXAMINATION A WORK PLAN CONSISTING OF THE FOLLOWING:

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

26 (II) THE NAME AND CONTACT INFORMATION OF THE MARKET  
27 CONDUCT SURVEILLANCE PERSONNEL WHO WILL BE CONDUCTING THE

1 EXAMINATION;

2 (III) THE TYPE OF MARKET CONDUCT EXAMINATION BEING

3 CONDUCTED;

4 (IV) THE SCOPE OF THE EXAMINATION;

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

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

7 AND

8 (VII) AN ESTIMATED COST FOR THE EXAMINATION.

9 (c) IF A MARKET CONDUCT EXAMINATION IS EXPANDED BEYOND

10 THE SCOPE PROVIDED TO THE COMPANY IN THE WORK PLAN, THE DIVISION

11 SHALL:

12 (I) PROVIDE WRITTEN NOTICE TO THE COMPANY EXPLAINING THE

13 EXTENT OF AND REASONS FOR THE EXPANSION; AND

14 (II) PROVIDE THE COMPANY WITH A REVISED WORK PLAN AS SOON

15 AS PRACTICABLE.

16 (5) BEFORE CONCLUDING A MARKET CONDUCT EXAMINATION, THE

17 DIVISION SHALL OFFER, IN WRITING, TO HOLD A PREDRAFT CONFERENCE

18 WITH THE COMPANY SUBJECT TO THE EXAMINATION AT LEAST THIRTY

19 DAYS BEFORE FILING A DRAFT REPORT. IF THE COMPANY CHOOSES TO HAVE

20 A PREDRAFT CONFERENCE, THE DIVISION SHALL DESIGN AND CONDUCT THE

21 PREDRAFT CONFERENCE IN ACCORDANCE WITH THE EXAMINATION REPORT

22 PROVISIONS OF THE MARKET REGULATION HANDBOOK TO FACILITATE:

23 (a) RESOLUTION OF OUTSTANDING ISSUES;

24 (b) DISCUSSION OF POSSIBLE CORRECTIVE ACTIONS;

25 (c) REVIEW OF THE EXAMINATION REPORT BEFORE IT IS FILED IN

26 DRAFT FORM; AND

27 (d) COMPLETE, ACCURATE, JUST, SPEEDY, AND INEXPENSIVE

1 CONCLUSION OF THE EXAMINATION.

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

5 (I) THE DIVISION SHALL DELIVER THE DRAFT REPORT TO THE  
6 COMPANY WITHIN SIXTY DAYS AFTER COMPLETION OF THE MARKET  
7 CONDUCT EXAMINATION, WHICH IS THE DATE WHEN THE DIVISION  
8 CONFIRMS IN WRITING THAT THE EXAMINATION IS COMPLETED.

9 (II) THE COMPANY MAY RESPOND WITH WRITTEN SUBMISSIONS OR  
10 REBUTTALS CHALLENGING ANY ISSUE CONTAINED IN THE DRAFT REPORT  
11 WITHIN THIRTY DAYS AFTER THE DATE OF THE DRAFT REPORT. ANY ISSUE  
12 IN THE DRAFT REPORT THAT IS NOT CHALLENGED BY THE COMPANY IS  
13 DEEMED ACCEPTED BY THE COMPANY. THE COMPANY'S WRITTEN  
14 SUBMISSIONS AND REBUTTALS MUST BE INCLUDED IN THE MARKET  
15 CONDUCT SURVEILLANCE PERSONNEL'S WORK PAPERS.

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

26 (IV) WITHIN THIRTY DAYS AFTER ISSUANCE OF THE FINAL REPORT,  
27 THE COMPANY MUST ACCEPT THE FINDINGS OF THE FINAL REPORT OR

1 REQUEST A WRITTEN HEARING.

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

4 (I) THE COMMISSIONER SHALL ISSUE AN ORDER ADOPTING THE  
5 FINAL REPORT AS WRITTEN OR WITH SPECIFIED MODIFICATIONS OR  
6 CORRECTIONS WITHIN THIRTY DAYS AFTER THE COMPANY ACCEPTS THE  
7 REPORT.

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

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

21 (III) NOTWITHSTANDING THE REQUIREMENTS OF SECTION  
22 10-1-127, IF THE FINAL AGENCY ORDER MODIFIES OR CORRECTS THE FINAL  
23 REPORT ACCEPTED BY THE COMPANY, THE COMPANY MAY APPEAL THE  
24 MODIFIED OR CORRECTED PORTIONS OF THE FINAL AGENCY ORDER,  
25 INCLUDING THE PENALTY OR ALL OR PART OF ANY FINE OR CIVIL PENALTY  
26 IMPOSED IN THE ORDER, TO THE DISTRICT COURT PURSUANT TO SECTION  
27 24-4-106. IN THE ABSENCE OF ANY MODIFICATION OR CORRECTIONS TO

1 THE FINAL REPORT ACCEPTED BY THE COMPANY, THE COMPANY DOES NOT  
2 HAVE A RIGHT TO JUDICIAL REVIEW OF THE FINAL AGENCY ACTION  
3 ADOPTED BY THE COMMISSIONER EXCEPT FOR THE RIGHT TO APPEAL THE  
4 PENALTY OR ALL OR PART OF ANY FINE OR CIVIL PENALTY IMPOSED IN THE  
5 ORDER TO THE DISTRICT COURT PURSUANT TO SECTION 24-4-106.

6 (c) IF THE COMPANY REQUESTS A WRITTEN HEARING, THE  
7 FOLLOWING PROCEDURES APPLY:

8 (I) THE COMPANY MUST REQUEST THE WRITTEN HEARING IN  
9 WRITING AND MUST SPECIFY THE ISSUES IN THE FINAL REPORT THAT THE  
10 COMPANY IS CHALLENGING. THE COMPANY IS LIMITED TO CHALLENGING  
11 THE ISSUES THAT WERE PREVIOUSLY CHALLENGED IN THE COMPANY'S  
12 WRITTEN SUBMISSION AND REBUTTAL OR SUPPLEMENTAL SUBMISSION AND  
13 REBUTTAL AS PROVIDED PURSUANT TO SUBSECTIONS (6)(a)(II) AND  
14 (6)(a)(III) OF THIS SECTION.

15 (II) THE HEARING SHALL BE CONDUCTED BY WRITTEN ARGUMENTS  
16 SUBMITTED TO THE COMMISSIONER.

17 (III) DISCOVERY IS LIMITED TO THE MARKET CONDUCT  
18 SURVEILLANCE PERSONNEL'S WORK PAPERS THAT ARE RELEVANT TO THE  
19 ISSUES THE COMPANY IS CHALLENGING. THE RELEVANT MARKET CONDUCT  
20 SURVEILLANCE PERSONNEL'S WORK PAPERS ARE DEEMED ADMITTED AND  
21 INCLUDED IN THE RECORD. NO OTHER FORMS OF DISCOVERY, INCLUDING  
22 DEPOSITIONS AND INTERROGATORIES, ARE ALLOWED, EXCEPT UPON THE  
23 WRITTEN AGREEMENT OF THE COMPANY AND THE DIVISION.

24 (IV) ONLY THE COMPANY AND THE DIVISION MAY SUBMIT WRITTEN  
25 ARGUMENTS.

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

1 (VI) THE DIVISION SHALL SUBMIT ITS WRITTEN RESPONSE WITHIN  
2 THIRTY DAYS AFTER THE END OF THE PERIOD ALLOWED FOR THE COMPANY  
3 TO SUBMIT ITS WRITTEN ARGUMENT.

4 (VII) THE COMMISSIONER SHALL ISSUE A DECISION ACCOMPANIED  
5 BY FINDINGS AND CONCLUSIONS RESULTING FROM THE COMMISSIONER'S  
6 CONSIDERATION AND REVIEW OF THE WRITTEN ARGUMENTS, THE FINAL  
7 REPORT, RELEVANT MARKET CONDUCT SURVEILLANCE PERSONNEL WORK  
8 PAPERS, AND ANY WRITTEN SUBMISSIONS OR REBUTTALS. THE  
9 COMMISSIONER'S ORDER IS A FINAL AGENCY ACTION AND SHALL BE SERVED  
10 UPON THE COMPANY BY CERTIFIED MAIL TOGETHER WITH A COPY OF THE  
11 FINAL REPORT. UNLESS THE EFFECTIVE DATE OF THE FINAL AGENCY ORDER  
12 IS POSTPONED PURSUANT TO SECTION 24-4-106 (5), WITHIN SIXTY DAYS  
13 AFTER ISSUANCE OF THE FINAL AGENCY ORDER, THE COMPANY SHALL FILE  
14 AFFIDAVITS EXECUTED BY EACH OF ITS DIRECTORS STATING UNDER OATH  
15 THAT THE DIRECTORS HAVE RECEIVED A COPY OF THE FINAL REPORT AND  
16 RELATED ORDERS.

17 (VIII) ANY PORTION OF THE FINAL REPORT THAT IS NOT OR  
18 CANNOT BE CHALLENGED BY THE COMPANY IS INCORPORATED INTO THE  
19 DECISION OF THE COMMISSIONER.

20 (IX) NOTWITHSTANDING THE REQUIREMENTS OF SECTION  
21 10-1-127, THE COMMISSIONER'S DECISION IS A FINAL AGENCY ACTION  
22 APPEALABLE TO THE DISTRICT COURT PURSUANT TO SECTION 24-4-106.

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

26 (8) (a) THE COMMISSIONER SHALL CONTINUE TO HOLD THE  
27 CONTENT OF ANY FINAL AGENCY ACTION OF A MARKET CONDUCT

1 EXAMINATION AS PRIVATE AND CONFIDENTIAL FOR A PERIOD OF  
2 FORTY-NINE DAYS AFTER THE FINAL AGENCY ACTION. AFTER THE  
3 FORTY-NINE-DAY PERIOD EXPIRES, THE COMMISSIONER SHALL OPEN THE  
4 FINAL AGENCY ACTION FOR PUBLIC INSPECTION IF A COURT OF COMPETENT  
5 JURISDICTION HAS NOT STAYED ITS PUBLICATION.

6 (b) NOTHING IN THIS PART 3 PREVENTS THE COMMISSIONER FROM  
7 DISCLOSING THE CONTENT OF AN EXAMINATION REPORT, PRELIMINARY  
8 EXAMINATION REPORT, OR RESULTS, OR ANY MATTER RELATING TO A  
9 REPORT OR RESULTS, TO THE DIVISION OR TO THE INSURANCE DIVISION OF  
10 ANY OTHER STATE OR AGENCY OR OFFICE OF THE FEDERAL GOVERNMENT  
11 AT ANY TIME IF THE DIVISION, AGENCY, OR OFFICE RECEIVING THE REPORT  
12 OR RELATED MATTERS AGREES AND HAS THE LEGAL AUTHORITY TO HOLD  
13 IT CONFIDENTIAL IN A MANNER CONSISTENT WITH THIS PART 3.

14 **10-1-306. Market conduct surveillance personnel.** (1) MARKET  
15 CONDUCT SURVEILLANCE PERSONNEL MUST BE QUALIFIED BY EDUCATION,  
16 EXPERIENCE, AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS.  
17 THE COMMISSIONER MAY SUPPLEMENT THE IN-HOUSE MARKET CONDUCT  
18 SURVEILLANCE STAFF WITH QUALIFIED OUTSIDE PROFESSIONAL  
19 ASSISTANCE IF THE COMMISSIONER DETERMINES THAT OUTSIDE  
20 ASSISTANCE IS NECESSARY.

21 (2) THE COMMISSIONER SHALL NOT APPOINT MARKET CONDUCT  
22 SURVEILLANCE PERSONNEL WHO, EITHER DIRECTLY OR INDIRECTLY, HAVE  
23 A CONFLICT OF INTEREST OR ARE AFFILIATED WITH THE MANAGEMENT OF  
24 OR OWN A PECUNIARY INTEREST IN ANY PERSON SUBJECT TO ANY TYPE OF  
25 MARKET CONDUCT SURVEILLANCE UNDER THIS PART 3; EXCEPT THAT THIS  
26 SECTION DOES NOT PRECLUDE MARKET CONDUCT SURVEILLANCE  
27 PERSONNEL FROM BEING:

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

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

6 (c) AN INVESTMENT OWNER IN SHARES OF REGULATED DIVERSIFIED  
7 INVESTMENT COMPANIES; OR

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

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

17 **10-1-307. Immunity from liability - prohibited activity.** (1) A  
18 CAUSE OF ACTION DOES NOT ARISE, AND LIABILITY SHALL NOT BE IMPOSED,  
19 AGAINST THE COMMISSIONER, THE COMMISSIONER'S AUTHORIZED  
20 REPRESENTATIVES, OR ANY MARKET CONDUCT SURVEILLANCE PERSONNEL  
21 EMPLOYED OR APPOINTED BY THE COMMISSIONER FOR ANY STATEMENTS  
22 MADE OR CONDUCT PERFORMED IN GOOD FAITH WHILE CARRYING OUT THE  
23 PROVISIONS OF THIS PART 3.

24 (2) A CAUSE OF ACTION DOES NOT ARISE, AND LIABILITY SHALL  
25 NOT BE IMPOSED, AGAINST ANY PERSON FOR COMMUNICATING OR  
26 DELIVERING INFORMATION OR DATA TO THE COMMISSIONER, THE  
27 COMMISSIONER'S AUTHORIZED REPRESENTATIVE, OR ANY MARKET

1 CONDUCT SURVEILLANCE PERSONNEL PURSUANT TO A MARKET CONDUCT  
2 SURVEILLANCE PERFORMED UNDER THIS PART 3, IF THE COMMUNICATION  
3 OR DELIVERY WAS PERFORMED IN GOOD FAITH AND WITHOUT FRAUDULENT  
4 INTENT OR THE INTENT TO DECEIVE.

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

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

17 (5) (a) A COMPANY SHALL NOT TAKE ANY RETALIATORY  
18 PERSONNEL ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE  
19 PROVIDES INFORMATION PURSUANT TO ANY TYPE OF MARKET CONDUCT  
20 SURVEILLANCE EXAMINING THE PRACTICES OF THE COMPANY.

21 (b) AN EMPLOYEE WHO HAS BEEN THE SUBJECT OF A RETALIATORY  
22 PERSONNEL ACTION IN VIOLATION OF SUBSECTION (5)(a) OF THIS SECTION  
23 MAY INSTITUTE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION  
24 FOR RELIEF WITHIN ONE YEAR AFTER LEARNING OF THE ALLEGED  
25 RETALIATORY ACTION.

26 (c) A COURT OF COMPETENT JURISDICTION MAY ORDER RELIEF AS  
27 FOLLOWS:

1 (I) REINSTATEMENT OF THE EMPLOYEE TO THE SAME POSITION  
2 HELD BEFORE THE RETALIATORY PERSONNEL ACTION OR TO AN  
3 EQUIVALENT POSITION;

4 (II) REINSTATEMENT OF FULL BENEFITS AND SENIORITY RIGHTS;  
5 AND

6 (III) COMPENSATION FOR LOST WAGES AND BENEFITS.

7 (d) UPON A DETERMINATION THAT A COMPANY HAS TAKEN A  
8 RETALIATORY PERSONNEL ACTION, THE COURT MAY AWARD COSTS OF THE  
9 ACTION TOGETHER WITH REASONABLE ATTORNEY FEES.

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

15 **10-1-309. Confidentiality requirements.** (1) (a) MARKET  
16 CONDUCT SURVEILLANCE PERSONNEL HAVE FREE AND FULL ACCESS TO THE  
17 FOLLOWING DOCUMENTS OF AND PERSONS ASSOCIATED WITH THE  
18 COMPANY DURING REGULAR BUSINESS HOURS:

19 (I) BOOKS;

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

22 (III) EMPLOYEES;

23 (IV) OFFICERS; AND

24 (V) DIRECTORS.

25 (b) UPON REQUEST OF MARKET CONDUCT SURVEILLANCE  
26 PERSONNEL, A COMPANY UTILIZING A THIRD-PARTY MODEL OR PRODUCT  
27 FOR ANY OF THE ACTIVITIES BEING REVIEWED SHALL MAKE THE DETAILS

1 OF THE MODELS OR PRODUCTS AVAILABLE TO THE PERSONNEL.

2 (c) (I) THE COMMISSIONER AND ANY OTHER PERSON IN THE COURSE  
3 OF MARKET CONDUCT SURVEILLANCE SHALL KEEP CONFIDENTIAL ALL  
4 DOCUMENTS, INCLUDING WORKING PAPERS, THIRD-PARTY MODELS OR  
5 PRODUCTS, COMPLAINT LOGS, AND COPIES OF ANY DOCUMENTS CREATED,  
6 PRODUCED, OBTAINED BY, OR DISCLOSED TO THE COMMISSIONER, MARKET  
7 CONDUCT SURVEILLANCE PERSONNEL, OR ANY OTHER PERSON IN THE  
8 COURSE OF MARKET CONDUCT SURVEILLANCE CONDUCTED PURSUANT TO  
9 THIS PART 3, AND ALL DOCUMENTS OBTAINED BY THE NAIC AS A RESULT  
10 OF THIS PART 3. THE DOCUMENTS REMAIN CONFIDENTIAL BEYOND THE  
11 TERMINATION OF THE MARKET CONDUCT SURVEILLANCE, ARE NOT  
12 SUBJECT TO SUBPOENA, AND MUST NOT BE MADE PUBLIC AT ANY TIME OR  
13 USED BY THE COMMISSIONER OR ANY OTHER PERSON, EXCEPT AS PROVIDED  
14 IN SUBSECTIONS (2), (3), AND (5) OF THIS SECTION AND SECTION 10-1-312.

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

24 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, AND  
25 CONSISTENT WITH SUBSECTION (3) OF THIS SECTION, IN ORDER TO ASSIST  
26 IN THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE  
27 COMMISSIONER MAY:

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

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

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

22 (3) NOTHING IN THIS PART 3 LIMITS:

23 (a) THE COMMISSIONER'S AUTHORITY TO USE, IF CONSISTENT WITH  
24 SECTION 10-3-414, ANY FINAL OR PRELIMINARY EXAMINATION REPORT,  
25 ANY MARKET CONDUCT SURVEILLANCE OR COMPANY WORK PAPERS OR  
26 OTHER DOCUMENTS, OR ANY OTHER INFORMATION DISCOVERED OR  
27 DEVELOPED DURING THE COURSE OF ANY MARKET CONDUCT

1 SURVEILLANCE, IN THE FURTHERANCE OF ANY LEGAL OR REGULATORY  
2 ACTION INITIATED BY THE COMMISSIONER THAT THE COMMISSIONER MAY,  
3 IN THE COMMISSIONER'S SOLE DISCRETION, DEEM APPROPRIATE; OR

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

6 (4) DISCLOSURE TO THE COMMISSIONER OF DOCUMENTS,  
7 MATERIALS, COMMUNICATIONS, OR INFORMATION REQUIRED AS PART OF  
8 ANY TYPE OF MARKET CONDUCT SURVEILLANCE DOES NOT WAIVE ANY  
9 APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE  
10 DOCUMENTS, MATERIALS, COMMUNICATIONS, OR INFORMATION.

11 (5) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENTS IN  
12 SUBSECTION (1)(c) OF THIS SECTION, WHEN THE COMMISSIONER PERFORMS  
13 ANY TYPE OF MARKET CONDUCT SURVEILLANCE THAT DOES NOT RISE TO  
14 THE LEVEL OF A MARKET CONDUCT EXAMINATION, THE COMMISSIONER  
15 MAY MAKE THE FINAL RESULTS OF THE MARKET CONDUCT SURVEILLANCE,  
16 IN AN AGGREGATED FORMAT, AVAILABLE FOR PUBLIC INSPECTION IN A  
17 MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

18 **10-1-310. Fines and penalties.** (1) (a) EXCEPT AS PROVIDED IN  
19 SUBSECTION (1)(b) OF THIS SECTION, AS A RESULT OF ANY MARKET  
20 CONDUCT SURVEILLANCE, THE COMMISSIONER MAY ORDER A MONETARY  
21 PENALTY OF UP TO THREE THOUSAND DOLLARS FOR EVERY ACT IN  
22 VIOLATION OF ANY LAW, RULE, OR PRIOR LAWFUL ORDER OF THE  
23 COMMISSIONER, NOT TO EXCEED AN AGGREGATE PENALTY OF THIRTY  
24 THOUSAND DOLLARS FOR EVERY ACT OR VIOLATION.

25 (b) IF THE COMPANY KNEW OR REASONABLY SHOULD HAVE KNOWN  
26 THAT ITS CONDUCT WAS IN VIOLATION OF ANY LAW, RULE, OR PRIOR  
27 LAWFUL ORDER OF THE COMMISSIONER, THE COMMISSIONER MAY ORDER

1 A PENALTY OF UP TO THIRTY THOUSAND DOLLARS FOR EVERY ACT OR  
2 VIOLATION, NOT TO EXCEED AN AGGREGATE PENALTY OF SEVEN HUNDRED  
3 FIFTY THOUSAND DOLLARS IN ANY ONE CALENDAR YEAR.

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

8 (3) WHEN DETERMINING THE APPROPRIATE CIVIL PENALTY FOR A  
9 COMPANY AND WHETHER TO STAY ANY PORTION OF THE CIVIL PENALTY,  
10 THE COMMISSIONER SHALL CONSIDER:

11 (a) ACTIONS TAKEN BY THE COMPANY TO MAINTAIN MEMBERSHIP  
12 IN, AND COMPLY WITH THE STANDARDS OF, BEST-PRACTICE  
13 ORGANIZATIONS THAT PROMOTE HIGH ETHICAL STANDARDS OF CONDUCT  
14 IN THE MARKETPLACE;

15 (b) THE EXTENT TO WHICH THE COMPANY MAINTAINS  
16 REGULATORY COMPLIANCE PROGRAMS TO SELF-ASSESS, SELF-REPORT, AND  
17 REMEDIATE PROBLEMS DETECTED; AND

18 (c) REGULATORY COMPLIANCE PROGRAMS OR CORRECTIVE  
19 ACTIONS THAT A COMPANY HAS INSTITUTED VOLUNTARILY PRIOR TO OR  
20 DURING THE PENDENCY OF ANY MARKET CONDUCT SURVEILLANCE IN  
21 ORDER TO REMEDY VIOLATIONS.

22 (4) IF THE COMMISSIONER STAYS ANY PORTION OF THE CIVIL  
23 PENALTY, THE COMMISSIONER SHALL REINSTATE THE FULL CIVIL PENALTY,  
24 AND MAY IMPOSE ADDITIONAL PENALTIES, IF THE COMPANY FAILS TO  
25 REMEDY THE VIOLATIONS.

26 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 3 TO  
27 THE CONTRARY, THE COMMISSIONER SHALL NOT IMPOSE ANY FINE OR

1 PENALTY ON ANY COMPANY FOR A VIOLATION OF ANY LAW, RULE, OR  
2 PRIOR LAWFUL ORDER OF THE COMMISSIONER IF THE VIOLATION AROSE  
3 FROM THE ACTION OR OMISSION OF A LICENSED, INDEPENDENT  
4 CONTRACTOR PRODUCER OF THE COMPANY AND THE PRODUCER IS SUBJECT  
5 TO EXAMINATION OR DISCIPLINARY PROCEEDINGS FOR ITS OWN  
6 VIOLATIONS, UNLESS THE COMMISSIONER MAKES A FINDING OF FACT THAT  
7 THE COMPANY KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE  
8 VIOLATION AND FAILED TO TAKE ADEQUATE REMEDIAL ACTION TO  
9 CORRECT OR STOP THE VIOLATION.

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

11 (1) THE COMMISSIONER SHALL REPORT MARKET DATA TO THE NAIC'S  
12 MARKET INFORMATION SYSTEMS, INCLUDING THE COMPLAINT DATABASE  
13 SYSTEM, THE EXAMINATION TRACKING SYSTEM, AND THE REGULATORY  
14 INFORMATION RETRIEVAL SYSTEM, OR OTHER SUCCESSOR NAIC PRODUCTS  
15 AS DETERMINED BY THE COMMISSIONER.

16 (2) (a) THE COMMISSIONER SHALL REPORT COMPLAINTS TO THE  
17 NAIC COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT, IN  
18 ACCORDANCE WITH NAIC GUIDELINES. HOWEVER, BEFORE PUBLICATION  
19 OF COMPANY-SPECIFIC COMPLAINT INFORMATION BY THE COMMISSIONER,  
20 INSURANCE INDUSTRY PERSONNEL SHALL BE GIVEN THE OPPORTUNITY TO  
21 REVIEW COLORADO-SPECIFIC COMPLAINTS ASSIGNED TO THEIR COMPANY  
22 IN THE COMMISSIONER'S COMPLAINTS DATABASE AND REQUEST THAT  
23 CORRECTIONS BE MADE TO THE DATA. THE COMMISSIONER SHALL REVIEW  
24 COMPANY OBJECTIONS TO ASSIGNED COMPLAINTS BEFORE PUBLISHING  
25 COMPANY-SPECIFIC COMPLAINTS INFORMATION AND SHALL MAKE  
26 CORRECTIONS TO THE COMMISSIONER'S COMPLAINTS DATABASE WHEN  
27 APPROPRIATE. IF THE COMMISSIONER MAKES CORRECTIONS TO ITS

1 COMPLAINTS DATABASE BASED ON ERRORS IDENTIFIED BY A COMPANY,  
2 THE COMMISSIONER SHALL SEND CORRECTED DATA TO THE NAIC  
3 COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT.

4 (b) THE COMMISSIONER SHALL ENSURE THAT COMPANIES HAVE  
5 UNTIL AT LEAST FEBRUARY 15 TO REVIEW COMPLAINTS DATA FOR THE  
6 IMMEDIATELY PRECEDING CALENDAR YEAR. IN ORDER FOR A COMPANY'S  
7 OBJECTIONS TO ITS COMPLAINTS DATA INFORMATION TO BE CONSIDERED,  
8 THE COMPANY MUST REVIEW AND REQUEST ANY CORRECTIONS TO THE  
9 PRIOR CALENDAR YEAR'S COMPLAINTS DATA NO LATER THAN FEBRUARY  
10 15.

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

13 **10-1-312. Coordination with other states through NAIC.**

14 (1) THE COMMISSIONER MAY SHARE INFORMATION AND COORDINATE THE  
15 COMMISSIONER'S MARKET SURVEILLANCE EFFORTS WITH OTHER STATES  
16 THROUGH THE NAIC.

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

20 (a) SHARE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR OTHER  
21 INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED  
22 DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SECTION 10-1-309  
23 (1), WITH OTHER STATE, FEDERAL, AND INTERNATIONAL REGULATORY  
24 AGENCIES AND LAW ENFORCEMENT AUTHORITIES AND THE NAIC, ITS  
25 AFFILIATES, AND SUBSIDIARIES, IF THE RECIPIENT AGREES TO AND HAS THE  
26 LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED  
27 STATUS OF THE DOCUMENT, MATERIAL, COMMUNICATION, OR OTHER

1 INFORMATION;

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

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

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

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

20 **SECTION 12.** In Colorado Revised Statutes, 8-44-204, **amend**  
21 (4) as follows:

22 **8-44-204. Public entities - self-insurance authorized for**  
23 **workers' compensation - pooled insurance.** (4) Any self-insurance  
24 pool authorized by subsection (3) of this section shall not be construed to  
25 be an insurance company nor otherwise subject to ~~the provisions of the~~  
26 laws of this state regulating insurance or insurance companies; except that  
27 the pool shall comply with the applicable provisions of sections 10-1-203

1 and 10-1-204 (1) to (5). ~~and (10), C.R.S.~~

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

4 **8-44-205. Employers - self-insurance pools authorized for**  
5 **workers' compensation.** (3) Any self-insurance pool authorized by  
6 subsection (2) of this section shall not be construed to be an insurance  
7 company nor otherwise subject to ~~the provisions of~~ the laws of this state  
8 regulating insurance or insurance companies; except that the pool shall  
9 comply with the applicable provisions of sections 10-1-203 and 10-1-204  
10 (1) to (5), ~~and (10), C.R.S.~~, and ~~shall be~~ IS subject to proceedings  
11 authorized by part 5 of article 3 of title 10. ~~C.R.S.~~

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

14 **10-1-103. Division of insurance - subject to repeal - repeal of**  
15 **functions.** (5) The office of the division of insurance is a public office.  
16 EXCEPT AS OTHERWISE PROVIDED BY LAW, the documents, materials, and  
17 information of the office or on file in the office are public records of this  
18 state, and information shall be furnished to anyone applying for the  
19 information; except that documents, materials, and information provided  
20 by the regulatory officials of any state, federal agency, or foreign country  
21 and by the national association of insurance commissioners shall be given  
22 confidential treatment if such documents, materials, and information are  
23 treated as confidential in such other state or foreign country or by such  
24 other federal agency or the national association of insurance  
25 commissioners. Notwithstanding any provision of this subsection (5) to  
26 the contrary, the commissioner or the commissioner's designee may share  
27 otherwise confidential documents, materials, and information with

1 regulatory officials of any state, federal agency, or foreign country and  
2 with the national association of insurance commissioners if the  
3 association or the regulatory official of the other state, federal agency, or  
4 foreign country agrees and has the legal authority to maintain the same  
5 level of confidentiality as applies to the documents, materials, and  
6 information under Colorado law.

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

9 **24-10-115.5. Authority for public entities to pool insurance**  
10 **coverage.** (2) Any self-insurance pool authorized by subsection (1) of  
11 this section shall not be construed to be an insurance company nor  
12 otherwise subject to ~~the provisions of~~ the laws of this state regulating  
13 insurance or insurance companies; except that the pool shall comply with  
14 the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5).  
15 ~~and (10), C.R.S.~~

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

18 **29-13-102. Authority for units of local government to pool**  
19 **insurance coverage.** (2) Any self-insurance pool authorized by  
20 subsection (1) of this section shall not be construed to be an insurance  
21 company nor otherwise subject to ~~the provisions of~~ the laws of this state  
22 regulating insurance or insurance companies; except that the pool shall  
23 comply with the applicable provisions of sections 10-1-203 and 10-1-204  
24 (1) to (5). ~~and (10), C.R.S.~~

25 **SECTION 17. Act subject to petition - effective date.** This act  
26 takes effect January 1, 2018; except that, if a referendum petition is filed  
27 pursuant to section 1 (3) of article V of the state constitution against this

1 act or an item, section, or part of this act within the ninety-day period  
2 after final adjournment of the general assembly, then the act, item,  
3 section, or part will not take effect unless approved by the people at the  
4 general election to be held in November 2018 and, in such case, will take  
5 effect on the date of the official declaration of the vote thereon by the  
6 governor.