

CHAPTER 211

INSURANCE

HOUSE BILL 06-1383

BY REPRESENTATIVE(S) Jahn, Coleman, Madden, McCluskey, and Pommer;
also SENATOR(S) Owen.

AN ACT

CONCERNING THE REGULATION OF INSURERS' MARKET CONDUCT BY THE COMMISSIONER OF INSURANCE.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the purpose of this act, to be known and cited as the "Market Conduct Surveillance Act", is to establish a framework for market conduct actions, including:

- (a) Processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;
- (b) Market conduct actions by the commissioner of insurance to substantiate market conduct problems and a means to remedy significant market conduct problems; and
- (c) Procedures to communicate and coordinate market conduct actions among states to foster the most efficient and effective use of resources.

SECTION 2. 10-1-103 (5), Colorado Revised Statutes, is amended to read:

10-1-103. Division of insurance - subject to termination - repeal of functions.

(5) The office of the division of insurance is a public office. ~~and The records, books, and papers thereof~~ DOCUMENTS, MATERIALS, AND INFORMATION OF THE OFFICE or on file ~~therein~~ IN THE OFFICE are public records of this state, and information shall be furnished to anyone ~~on application therefor~~ APPLYING FOR THE INFORMATION; except that ~~records, books, and papers received from other states,~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~either directly or through~~ DOCUMENTS, MATERIALS, AND INFORMATION PROVIDED BY THE REGULATORY OFFICIALS OF ANY STATE, FEDERAL AGENCY, OR FOREIGN COUNTRY AND BY the national association of insurance commissioners shall be given confidential treatment if such ~~records, books, and papers~~ DOCUMENTS, MATERIALS, AND INFORMATION are treated as confidential in such other ~~states~~ STATE OR FOREIGN COUNTRY OR BY SUCH OTHER FEDERAL AGENCY OR THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. Notwithstanding any provision of this subsection (5) to the contrary, the commissioner or the commissioner's designee may share otherwise confidential ~~records, books, and papers~~ DOCUMENTS, MATERIALS, AND INFORMATION with REGULATORY OFFICIALS OF ANY STATE, FEDERAL AGENCY, OR FOREIGN COUNTRY AND WITH the national association of insurance commissioners ~~or with the insurance department of another state~~ if ~~said~~ THE association or THE REGULATORY OFFICIAL OF THE other state, FEDERAL AGENCY, OR FOREIGN COUNTRY agrees AND HAS THE LEGAL AUTHORITY to maintain the same level of confidentiality as applies to ~~such records, books, and papers~~ THE DOCUMENTS, MATERIALS, AND INFORMATION under Colorado law.

SECTION 3. 10-1-202 (7), Colorado Revised Statutes, is amended, and the said 10-1-202 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(1.5) "COMPLAINT" MEANS A WRITTEN OR DOCUMENTED ORAL COMMUNICATION PRIMARILY EXPRESSING A GRIEVANCE OR AN EXPRESSION OF DISSATISFACTION.

(1.7) "DESK EXAMINATION" MEANS AN EXAMINATION THAT IS CONDUCTED BY AN EXAMINER AT A LOCATION OTHER THAN THE INSURER'S PREMISES. A DESK EXAMINATION IS USUALLY PERFORMED IN THE OFFICES OF THE DIVISION WITH THE INSURER PROVIDING REQUESTED DOCUMENTS BY HARD COPY, MICROFICHE, DISCS, OR OTHER ELECTRONIC MEDIA FOR REVIEW.

~~(7) "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any agent or affiliate thereof.~~ "MARKET ANALYSIS" MEANS A PROCESS WHEREBY MARKET CONDUCT SURVEILLANCE PERSONNEL COLLECT AND ANALYZE INFORMATION FROM FILED SCHEDULES, SURVEYS, REQUIRED REPORTS, AND OTHER SOURCES IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF THE MARKETPLACE AND TO IDENTIFY PATTERNS OR PRACTICES OF INSURERS THAT DEVIATE SIGNIFICANTLY FROM THE NORM OR THAT MAY POSE RISK TO THE INSURANCE CONSUMER.

(8) "MARKET CONDUCT ACTION" MEANS ANY OF THE FULL RANGE OF ACTIVITIES THAT THE COMMISSIONER MAY INITIATE TO ASSESS AND ADDRESS THE MARKET PRACTICES OF INSURERS LICENSED TO CONDUCT BUSINESS IN THIS STATE, FROM MARKET ANALYSIS TO TARGETED, ON-SITE EXAMINATIONS. THE COMMISSIONER'S ACTIVITIES TO RESOLVE AN INDIVIDUAL CONSUMER COMPLAINT OR OTHER REPORT OF A SPECIFIC INSTANCE OF MISCONDUCT ARE NOT MARKET CONDUCT ACTIONS FOR THE PURPOSES OF THIS PART 2.

(9) "MARKET CONDUCT SURVEILLANCE PERSONNEL" MEANS THOSE INDIVIDUALS

EMPLOYED BY OR UNDER CONTRACT WITH THE COMMISSIONER TO COLLECT, ANALYZE, REVIEW, OR ACT ON INFORMATION ABOUT THE INSURANCE MARKETPLACE THAT IDENTIFIES PATTERNS OR PRACTICES OF INSURERS.

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

(11) "NAIC MARKET ANALYSIS HANDBOOK" MEANS THE OUTLINE OF THE ELEMENTS AND OBJECTIVES OF MARKET ANALYSIS DEVELOPED AND ADOPTED BY THE NAIC AND THE PROCESS BY WHICH STATES CAN ESTABLISH AND IMPLEMENT MARKET ANALYSIS PROGRAMS, OR ITS SUCCESSOR DOCUMENT.

(12) "NAIC MARKET CONDUCT EXAMINER'S HANDBOOK" MEANS THE SET OF GUIDELINES DEVELOPED AND ADOPTED BY THE NAIC THAT DOCUMENTS ESTABLISHED PRACTICES TO BE USED BY MARKET CONDUCT SURVEILLANCE PERSONNEL IN DEVELOPING AND EXECUTING AN EXAMINATION, OR ITS SUCCESSOR DOCUMENT.

(13) "NAIC MARKET CONDUCT UNIFORM EXAMINATION PROCEDURES" MEANS THE SET OF GUIDELINES DEVELOPED AND ADOPTED BY THE NAIC DESIGNED TO BE USED BY MARKET CONDUCT SURVEILLANCE PERSONNEL IN CONDUCTING AN EXAMINATION, OR ITS SUCCESSOR DOCUMENT.

(14) "ON-SITE EXAMINATION" MEANS AN EXAMINATION CONDUCTED AT THE INSURER'S HOME, THE INSURER'S OFFICE, OR THE LOCATION WHERE THE RECORDS UNDER REVIEW ARE STORED.

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

(16) "QUALIFIED CONTRACT EXAMINER" MEANS A PERSON WHO IS UNDER CONTRACT WITH THE COMMISSIONER AND WHO IS QUALIFIED BY EDUCATION, EXPERIENCE, AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS, TO PERFORM MARKET CONDUCT ACTIONS.

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

(18) "TARGETED EXAMINATION" MEANS AN EXAMINATION, INCLUDING, BUT NOT LIMITED TO, LIMITED REVIEW AND ANALYSIS CONDUCTED THROUGH A DESK EXAMINATION OR ON-SITE EXAMINATION AND IN ACCORDANCE WITH MARKET CONDUCT UNIFORM EXAMINATION PROCEDURES. THE TARGETED EXAMINATION SHALL BE OF A SPECIFIC INSURER'S CONDUCT, PRACTICES, OR RISKS IDENTIFIED THROUGH MARKET ANALYSIS THAT HAVE NOT BEEN REMEDIED BY THE INSURER, INCLUDING, BUT NOT LIMITED TO, UNDERWRITING AND RATING, MARKETING AND SALES, COMPLAINT-HANDLING, OPERATIONS AND MANAGEMENT, ADVERTISING MATERIALS, LICENSING, POLICYHOLDER SERVICES, NONFORFEITURES, CLAIMS HANDLING, OR POLICY FORMS AND FILINGS. A TARGETED EXAMINATION MAY BE

CONDUCTED AS A DESK EXAMINATION OR AS AN ON-SITE EXAMINATION.

(19) "THIRD-PARTY MODEL OR PRODUCT" MEANS A MODEL OR PRODUCT PROVIDED BY AN ENTITY SEPARATE FROM AND NOT UNDER DIRECT OR INDIRECT CORPORATE CONTROL OF THE INSURER USING THE MODEL OR PRODUCT.

SECTION 4. Part 2 of article 1 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-1-209. Short title. SECTIONS 10-1-209 TO 10-1-218 SHALL BE KNOWN AND MAY BE CITED AS THE "MARKET CONDUCT SURVEILLANCE ACT".

10-1-210. Market analysis procedures. (1) (a) THE COMMISSIONER IS RESPONSIBLE FOR CONDUCTING MARKET CONDUCT EXAMINATIONS FOR COLORADO POLICYHOLDER PROTECTION, WHICH SHALL BE ACCOMPLISHED BY EXAMINATIONS OF DOMESTIC INSURERS AND FOREIGN INSURERS AS DEEMED NECESSARY BY THE COMMISSIONER. IF THE INSURER TO BE EXAMINED IS PART OF AN INSURANCE HOLDING COMPANY SYSTEM, THE COMMISSIONER MAY ALSO SIMULTANEOUSLY EXAMINE ANY AFFILIATE OF THE INSURER THAT IS AUTHORIZED TO WRITE INSURANCE IN THIS STATE IF THE AFFILIATED INSURER WRITES BUSINESS FOR COLORADO POLICYHOLDERS.

(b) THE COMMISSIONER MAY DELEGATE RESPONSIBILITY FOR CONDUCTING AN EXAMINATION OF A DOMESTIC INSURER, FOREIGN INSURER, OR AN AFFILIATE OF AN INSURER, AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1), TO THE INSURANCE COMMISSIONER OF ANOTHER STATE IF THAT INSURANCE COMMISSIONER AGREES TO ACCEPT THE DELEGATED RESPONSIBILITY FOR THE EXAMINATION. IF THE COMMISSIONER ELECTS TO DELEGATE RESPONSIBILITY FOR EXAMINING AN INSURER, THE COMMISSIONER SHALL ACCEPT A MARKET CONDUCT EXAMINATION REPORT PREPARED BY THE INSURANCE COMMISSIONER TO WHOM THE RESPONSIBILITY HAS BEEN DELEGATED IF THE COMMISSIONER DETERMINES THAT:

(I) THE LAWS OF THE EXAMINING STATE THAT ARE APPLICABLE TO THE SUBJECT OF THE EXAMINATION ARE SUBSTANTIALLY SIMILAR TO THOSE OF THIS STATE;

(II) THE EXAMINING STATE HAS A MARKET CONDUCT SURVEILLANCE SYSTEM THAT IS COMPARABLE TO THE MARKET CONDUCT SURVEILLANCE SYSTEM REQUIRED BY THIS PART 2 AT THE TIME THE COMMISSIONER IS EVALUATING WHETHER TO EXAMINE THE INSURER; AND

(III) THE EXAMINATION FROM THE OTHER STATE'S COMMISSIONER HAS BEEN CONDUCTED WITHIN THE PAST FIVE YEARS.

(c) IF THE INSURANCE COMMISSIONER TO WHOM THE EXAMINATION RESPONSIBILITY WAS DELEGATED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) DID NOT EVALUATE THE SPECIFIC AREA OR ISSUE OF CONCERN TO THE COMMISSIONER OR A SPECIFIC REQUIREMENT OF COLORADO LAW, THE COMMISSIONER MAY PURSUE A TARGETED EXAMINATION OR MARKET ANALYSIS OF THE UNEXAMINED AREA PURSUANT TO THIS PART 2.

(d) SUBJECT TO THE DETERMINATION UNDER PARAGRAPH (b) OF THIS SUBSECTION

(1) IF A MARKET CONDUCT EXAMINATION CONDUCTED BY ANOTHER STATE RESULTS IN A FINDING THAT AN INSURER SHOULD MODIFY A SPECIFIC PRACTICE OR PROCEDURE, THE COMMISSIONER SHALL ACCEPT APPROPRIATELY DETAILED DOCUMENTATION THAT THE INSURER HAS MADE A SIMILAR MODIFICATION IN THIS STATE IN LIEU OF INITIATING A MARKET CONDUCT ACTION OR EXAMINATION ON THE PRACTICE OR PROCEDURE. THE COMMISSIONER MAY REQUIRE OTHER OR ADDITIONAL PRACTICE OR PROCEDURE MODIFICATIONS.

(e) THE COMMISSIONER SHALL REVIEW HIS OR HER DELEGATIONS OF EXAMINATION RESPONSIBILITY MADE PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) AT LEAST ANNUALLY.

(2)(a) THE COMMISSIONER SHALL GATHER INFORMATION FROM DATA CURRENTLY AVAILABLE TO THE DIVISION, REQUIRED REPORTING REQUIREMENTS, INFORMATION COLLECTED BY THE NAIC, AND INFORMATION FROM A VARIETY OF OTHER SOURCES IN BOTH THE PUBLIC AND PRIVATE SECTORS.

(b) THE COMMISSIONER SHALL ANALYZE THE INFORMATION COLLECTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF THE MARKETPLACE AND TO IDENTIFY FOR FURTHER REVIEW INSURERS OR PRACTICES THAT DEVIATE SIGNIFICANTLY FROM THE NORM OR THAT MAY POSE A POTENTIAL RISK TO THE INSURANCE CONSUMER. THE COMMISSIONER SHALL USE THE NAIC MARKET ANALYSIS HANDBOOK AS ONE RESOURCE IN PERFORMING THIS ANALYSIS.

(3) (a) IF THE COMMISSIONER DETERMINES, AS A RESULT OF MARKET ANALYSIS, THAT FURTHER INQUIRY INTO A PARTICULAR INSURER OR PRACTICE IS NEEDED, THE FOLLOWING CONTINUUM OF MARKET CONDUCT ACTIONS MAY BE CONSIDERED PRIOR TO CONDUCTING A TARGETED, ON-SITE MARKET CONDUCT EXAMINATION. THE MARKET CONDUCT ACTION SELECTED SHALL BE MADE KNOWN TO THE INSURER IN WRITING IF THE MARKET CONDUCT ACTION INVOLVES INSURER PARTICIPATION OR RESPONSE. THESE MARKET CONDUCT ACTIONS MAY INCLUDE, BUT ARE NOT LIMITED TO:

(I) DESK EXAMINATIONS;

(II) CORRESPONDENCE WITH THE INSURER;

(III) INSURER INTERVIEWS;

(IV) INFORMATION GATHERING;

(V) POLICY AND PROCEDURE REVIEWS;

(VI) INTERROGATORIES;

(VII) REVIEW OF INSURER SELF-EVALUATION, IF THE SELF-EVALUATION IS NOT SUBJECT TO A PRIVILEGE OF CONFIDENTIALITY; AND

(VIII) COMPLIANCE PROGRAMS, INCLUDING MEMBERSHIP IN A BEST-PRACTICE ORGANIZATION.

(b) THE COMMISSIONER SHALL SELECT A MARKET CONDUCT ACTION THAT IS COST-EFFECTIVE FOR THE DIVISION AND THE INSURER WHILE STILL PROTECTING THE INSURANCE CONSUMER.

(c) (I) THE COMMISSIONER SHALL TAKE THOSE STEPS REASONABLY NECESSARY TO ELIMINATE REQUESTS FOR INFORMATION THAT DUPLICATE OR CONFLICT WITH INFORMATION PROVIDED AS PART OF AN INSURER'S FINANCIAL STATEMENT, THE ANNUAL MARKET CONDUCT STATEMENT OF THE NAIC, OR OTHER REQUIRED SCHEDULES, SURVEYS, OR REPORTS THAT ARE SUBMITTED REGULARLY TO THE COMMISSIONER OR WITH DATA REQUESTS MADE BY OTHER STATES IF THAT INFORMATION IS AVAILABLE TO THE COMMISSIONER, UNLESS THE INFORMATION IS STATE SPECIFIC.

(II) TO THE EXTENT PRACTICABLE, THE COMMISSIONER SHALL COORDINATE WITH MARKET CONDUCT ACTIONS AND FINDINGS OF THIS STATE AND THOSE OF OTHER STATES.

10-1-211. Protocols for market conduct actions. (1) EACH MARKET CONDUCT ACTION TAKEN AS A RESULT OF A MARKET ANALYSIS SHALL:

(a) FOCUS ON THE GENERAL BUSINESS PRACTICES AND COMPLIANCE ACTIVITIES OF INSURERS RATHER THAN INITIATING MARKET CONDUCT ACTIONS IN RESPONSE TO CLEARLY INFREQUENT OR UNINTENTIONAL RANDOM ERRORS THAT DO NOT CAUSE SIGNIFICANT CONSUMER HARM; AND

(b) NOT RESULT IN A MARKET CONDUCT EXAMINATION UNLESS IT IS DETERMINED THAT ANY EXAMINATION IS BEYOND THE SCOPE OF THE EXAMINATION CONDUCTED IN THE INSURER'S STATE OF DOMICILE ON THE SPECIFIC AREA OF CONCERN WITHIN THE PAST FIVE YEARS.

(2) (a) THE COMMISSIONER IS AUTHORIZED TO DETERMINE THE FREQUENCY AND TIMING OF MARKET CONDUCT ACTIONS TAKEN AS A RESULT OF A MARKET ANALYSIS. THE TIMING SHALL DEPEND UPON THE SPECIFIC MARKET CONDUCT ACTION TO BE INITIATED UNLESS EXTRAORDINARY CIRCUMSTANCES INDICATING A RISK TO CONSUMERS REQUIRE IMMEDIATE ACTION.

(b) IF THE COMMISSIONER HAS INFORMATION THAT MORE THAN ONE INSURER IS ENGAGED IN COMMON PRACTICES THAT MAY VIOLATE STATUTE OR RULE, THE COMMISSIONER MAY SCHEDULE AND COORDINATE SIMULTANEOUS EXAMINATIONS.

(3) THE COMMISSIONER SHALL PROVIDE THE INSURER THE OPPORTUNITY TO RESOLVE, TO THE SATISFACTION OF THE COMMISSIONER, ANY DISPUTE REGARDING ANY INSURER-SPECIFIC INFORMATION THAT IS USED OR RELIED UPON BY THE COMMISSIONER WHEN IDENTIFYING INSURER PRACTICES FOR FURTHER REVIEW BEFORE THE INITIATION OF OR CONCURRENTLY WITH A MARKET CONDUCT ACTION THAT REQUIRES THE INSURER TO PROVIDE ADDITIONAL INFORMATION. THE COMMISSIONER SHALL NOT REQUIRE AN INSURER TO PROVIDE ADDITIONAL INFORMATION TO MARKET CONDUCT SURVEILLANCE PERSONNEL IN A MANNER THAT IS INCONSISTENT WITH EXISTING LAW, THAT IS OUTSIDE THE ORDINARY COURSE OF BUSINESS, OR THAT CANNOT BE CREATED AT REASONABLE EXPENSE OR EFFORT.

(4) FOR ANY CHANGE MADE BY THE COMMISSIONER TO AN NAIC WORK PRODUCT REFERENCED IN THIS PART 2 THAT MATERIALLY CHANGES THE WAY IN WHICH MARKET CONDUCT ACTIONS ARE CONDUCTED, THE COMMISSIONER SHALL GIVE NOTICE AND PROVIDE PARTIES WITH AN OPPORTUNITY FOR A PUBLIC HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S. IF A HEARING IS NOT REQUESTED, THE COMMISSIONER SHALL USE THE CHANGES AS APPLIED TO THE VERSIONS OF THE WORK PRODUCT MOST RECENTLY DEVELOPED AND ADOPTED BY THE NAIC. FOR PURPOSES OF THIS SUBSECTION (4), A "MATERIAL CHANGE" IS A CHANGE THAT WOULD REQUIRE A CHANGE TO A STATUTE OR RULE.

(5) EXCEPT AS OTHERWISE PROVIDED BY LAW, EVERY INSURER OR PERSON FROM WHOM INFORMATION IS SOUGHT, AS WELL AS ITS OFFICERS, DIRECTORS, AND AGENTS, SHALL PROVIDE THE COMMISSIONER CONVENIENT AND FREE ACCESS TO ALL BOOKS, RECORDS, ACCOUNTS, PAPERS, DOCUMENTS, AND COMPUTER OR OTHER RECORDINGS, RELATING TO THE PROPERTY, ASSETS, BUSINESS, AND AFFAIRS OF THE INSURER DURING REGULAR BUSINESS HOURS. THE OFFICERS, DIRECTORS, EMPLOYEES, INSURANCE PRODUCERS, AND AGENTS OF THE INSURER OR PERSON SHALL FACILITATE MARKET CONDUCT ACTIONS AND AID IN MARKET CONDUCT ACTIONS TO THE EXTENT POSSIBLE.

10-1-212. Targeted, on-site market conduct examinations - rules. (1) WHEN THE COMMISSIONER DETERMINES THAT OTHER MARKET CONDUCT ACTIONS IDENTIFIED IN SECTION 10-1-210 (3) (a) ARE NOT APPROPRIATE, THE COMMISSIONER HAS THE DISCRETION TO CONDUCT TARGETED, ON-SITE MARKET CONDUCT EXAMINATIONS IN ACCORDANCE WITH THE NAIC MARKET CONDUCT UNIFORM EXAMINATION PROCEDURES AND THE NAIC MARKET CONDUCT EXAMINER'S HANDBOOK.

(2) FOR A FOREIGN INSURER AUTHORIZED UNDER THIS TITLE TO DO BUSINESS IN THIS STATE, THE COMMISSIONER SHALL COORDINATE AN EXAMINATION WITH THE INSURANCE COMMISSIONER OF THE INSURER'S STATE OF DOMICILE TO THE EXTENT PRACTICABLE.

(3) (a) PRIOR TO COMMENCEMENT OF A TARGETED, ON-SITE MARKET CONDUCT EXAMINATION, MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL PREPARE A WORK PLAN CONSISTING OF THE FOLLOWING:

- (I) THE NAME AND ADDRESS OF THE INSURER BEING EXAMINED;
- (II) THE NAME AND CONTACT INFORMATION OF THE EXAMINER-IN-CHARGE;
- (III) THE JUSTIFICATION FOR THE EXAMINATION;
- (IV) THE SCOPE OF THE EXAMINATION;
- (V) THE DATE THE EXAMINATION IS SCHEDULED TO BEGIN;
- (VI) NOTICE OF ANY NONDIVISION PERSONNEL WHO WILL ASSIST IN THE EXAMINATION;
- (VII) A TIME ESTIMATE FOR THE DURATION OF THE EXAMINATION;

(VIII) A BUDGET FOR THE EXAMINATION; AND

(IX) AN IDENTIFICATION OF FACTORS THAT WILL BE INCLUDED IN THE BILLING IF THE COST OF THE EXAMINATION IS BILLED TO THE INSURER.

(b) TO THE EXTENT FEASIBLE, MARKET CONDUCT EXAMINATIONS SHALL UTILIZE DESK EXAMINATIONS AND DATA REQUESTS PRIOR TO A TARGETED, ON-SITE MARKET CONDUCT EXAMINATION.

(c) THE DIVISION SHALL USE THE NAIC STANDARD DATA REQUEST OR A SUCCESSOR PRODUCT ADOPTED BY RULE PROMULGATED BY THE COMMISSIONER THAT IS SUBSTANTIALLY SIMILAR TO THE NAIC STANDARD DATA REQUEST.

(4) (a) THE COMMISSIONER SHALL SEND AN ANNOUNCEMENT OF THE TARGETED, ON-SITE MARKET CONDUCT EXAMINATION TO THE INSURER AND SIMULTANEOUSLY SHALL POST NOTICE THAT A MARKET CONDUCT EXAMINATION HAS BEEN SCHEDULED ON THE NAIC'S EXAMINATION TRACKING SYSTEM OR SUCCESSOR NAIC PRODUCT, AS DETERMINED BY THE COMMISSIONER, AS SOON AS POSSIBLE BUT NO LATER THAN SIXTY DAYS BEFORE THE ESTIMATED START OF THE ON-SITE EXAMINATION. THE TIME LIMITATION SPECIFIED IN THIS SUBSECTION (4) SHALL NOT APPLY WHERE THE EXAMINATION IS CONDUCTED IN RESPONSE TO EXTRAORDINARY CIRCUMSTANCES AS DESCRIBED IN SECTION 10-1-211 (2) (a). THE ANNOUNCEMENT SENT TO THE INSURER SHALL CONTAIN THE EXAMINATION WORK PLAN AND A REQUEST FOR THE INSURER TO NAME ITS EXAMINATION COORDINATOR.

(b) IF A TARGETED, ON-SITE MARKET CONDUCT EXAMINATION IS EXPANDED BEYOND THE REASONS PROVIDED TO THE INSURER IN THE NOTICE OF THE EXAMINATION REQUIRED PURSUANT TO THIS SUBSECTION (4):

(I) THE COMMISSIONER SHALL PROVIDE WRITTEN NOTICE TO THE INSURER EXPLAINING THE EXTENT OF AND REASONS FOR THE EXPANSION; AND

(II) THE MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL PROVIDE A REVISED WORK PLAN TO THE INSURER AS SOON AS PRACTICABLE.

(5) EXCEPT AS PROVIDED IN SECTION 10-1-211 (2) (a), AT LEAST THIRTY DAYS PRIOR TO THE START OF THE TARGETED, ON-SITE MARKET CONDUCT EXAMINATION, THE COMMISSIONER SHALL OFFER TO CONDUCT A PRE-EXAMINATION CONFERENCE WITH THE INSURER'S EXAMINATION COORDINATOR AND KEY PERSONNEL TO CLARIFY EXPECTATIONS.

(6) PRIOR TO THE CONCLUSION OF A TARGETED, ON-SITE MARKET CONDUCT EXAMINATION, THE INDIVIDUAL AMONG THE MARKET CONDUCT SURVEILLANCE PERSONNEL WHO IS DESIGNATED AS THE EXAMINER-IN-CHARGE SHALL SCHEDULE AN EXIT CONFERENCE WITH THE INSURER.

(7) (a) THE COMMISSIONER SHALL ADHERE TO THE FOLLOWING TIME LINE, UNLESS A MUTUAL AGREEMENT IS REACHED WITH THE INSURER TO MODIFY THE TIME LINE:

(I) THE COMMISSIONER SHALL DELIVER THE DRAFT REPORT TO THE INSURER WITHIN SIXTY DAYS AFTER THE COMPLETION OF THE TARGETED, ON-SITE MARKET

CONDUCT EXAMINATION. COMPLETION OF THE EXAMINATION SHALL BE DEFINED AS THE DATE THE COMMISSIONER CONFIRMS IN WRITING THAT THE EXAMINATION IS COMPLETED.

(II) THE INSURER SHALL RESPOND WITH WRITTEN COMMENTS WITHIN THIRTY DAYS AFTER RECEIPT OF THE DRAFT REPORT.

(III) THE DIVISION SHALL MAKE A GOOD FAITH EFFORT TO RESOLVE ISSUES INFORMALLY AND PREPARE A FINAL REPORT WITHIN THIRTY DAYS AFTER RECEIPT OF THE INSURER'S WRITTEN COMMENTS UNLESS A MUTUAL AGREEMENT IS REACHED TO EXTEND THE DEADLINE. THE COMMISSIONER MAY MAKE CORRECTIONS AND OTHER CHANGES, AS APPROPRIATE.

(IV) WITHIN THIRTY DAYS AFTER RECEIPT OF THE FINAL REPORT, THE INSURER SHALL ACCEPT THE FINDINGS OF THE FINAL REPORT OR REQUEST A HEARING. IF AGREED TO BY THE COMMISSIONER AND THE INSURER, THE INSURER SHALL BE ALLOWED AN ADDITIONAL THIRTY DAYS TO RESPOND TO THE FINAL REPORT. A HEARING REQUEST SHALL BE MADE IN WRITING AND SHALL FOLLOW THE REQUIREMENTS OF ARTICLE 4 OF TITLE 24, C.R.S.

(b) THE COMMISSIONER SHALL MAKE THE INSURER'S RESPONSE TO AN EXAMINATION AVAILABLE UPON REQUEST. THE INSURER IS NOT OBLIGATED TO SUBMIT A RESPONSE. INDIVIDUALS INVOLVED IN THE TARGETED, ON-SITE MARKET CONDUCT EXAMINATION SHALL NOT BE NAMED IN EITHER THE REPORT OR THE RESPONSE EXCEPT TO ACKNOWLEDGE THEIR INVOLVEMENT.

(8) (a) EXCEPT AS PROVIDED FOR IN PARAGRAPH (b) OF THIS SUBSECTION (8), UPON ADOPTION OF THE FINAL REPORT PURSUANT TO SUBSECTION (7) OF THIS SECTION, THE COMMISSIONER SHALL CONTINUE TO HOLD THE CONTENT OF THE REPORT AS PRIVATE AND CONFIDENTIAL FOR A PERIOD OF THIRTY DAYS. AFTER THE THIRTY-DAY PERIOD EXPIRES, THE COMMISSIONER SHALL OPEN THE REPORT FOR PUBLIC INSPECTION IF NO COURT OF COMPETENT JURISDICTION HAS STAYED ITS PUBLICATION.

(b) NOTHING CONTAINED IN THIS PART 2 SHALL PREVENT OR BE CONSTRUED TO PREVENT THE COMMISSIONER FROM DISCLOSING THE CONTENT OF AN EXAMINATION REPORT, PRELIMINARY EXAMINATION REPORT, OR RESULTS, OR ANY MATTER RELATING TO A REPORT OR RESULTS, TO THE DIVISION OR TO THE INSURANCE DIVISION OF ANY OTHER STATE OR AGENCY OR OFFICE OF THE FEDERAL GOVERNMENT AT ANY TIME IF THE DIVISION, AGENCY, OR OFFICE RECEIVING THE REPORT OR RELATED MATTERS AGREES AND HAS THE LEGAL AUTHORITY TO HOLD IT CONFIDENTIAL IN A MANNER CONSISTENT WITH THIS PART 2.

(9) (a) WHERE THE REASONABLE AND NECESSARY COST OF A MARKET CONDUCT EXAMINATION IS TO BE ASSESSED BY FEE AGAINST THE INSURER UNDER EXAMINATION, THE FEE SHALL BE CONSISTENT WITH THE NAIC MARKET CONDUCT EXAMINER'S HANDBOOK. THE FEE SHALL BE ITEMIZED AND SHALL INCLUDE RECEIPTS FOR ALL APPLICABLE EXPENSES, AND BILLS SHALL BE PROVIDED TO THE INSURER ON AT LEAST A MONTHLY BASIS FOR REVIEW PRIOR TO SUBMISSION FOR PAYMENT. PAYMENT OF FEES SHALL BE MADE AT LEAST MONTHLY.

(b) THE COMMISSIONER SHALL MAINTAIN ACTIVE MANAGEMENT AND OVERSIGHT OF EXAMINATION COSTS, INCLUDING COSTS ASSOCIATED WITH THE COMMISSIONER'S OWN EXAMINERS AND WITH RETAINING QUALIFIED CONTRACT EXAMINERS NECESSARY TO PERFORM AN ON-SITE EXAMINATION. TO THE EXTENT THE COMMISSIONER RETAINS OUTSIDE ASSISTANCE, THE COMMISSIONER SHALL HAVE WRITTEN PROTOCOLS THAT:

(I) ESTABLISH AND UTILIZE A DISPUTE RESOLUTION OR ARBITRATION MECHANISM TO RESOLVE CONFLICTS WITH INSURERS REGARDING EXAMINATION FEES PURSUANT TO SECTION 10-1-204 (6) (b); AND

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

(c) AN INSURER SHALL NOT BE REQUIRED TO REIMBURSE ANY PORTION OF EXAMINER FEES UNDER THIS SUBSECTION (9) INCURRED BY MARKET CONDUCT SURVEILLANCE PERSONNEL OR QUALIFIED CONTRACT EXAMINERS THAT EXCEED THE FEES PRESCRIBED IN THE NAIC MARKET CONDUCT EXAMINER'S HANDBOOK AND ANY SUCCESSOR DOCUMENTS TO THAT HANDBOOK, UNLESS THE COMMISSIONER DEMONSTRATES THAT THE FEES PRESCRIBED IN THE HANDBOOK ARE INADEQUATE UNDER THE CIRCUMSTANCES OF THE EXAMINATION.

(d) AN INSURER MAY REQUEST AN INDEPENDENT AUDIT OF THE EXAMINATION FEES CHARGED BY A CONTRACT EXAMINER AT ANY TIME WITHIN TWELVE MONTHS AFTER THE COMPLETION OF THE MARKET CONDUCT EXAMINATION. THE INSURER SHALL BE RESPONSIBLE FOR THE COST OF THE INDEPENDENT AUDIT. THE CONTRACT EXAMINER SHALL MAINTAIN DOCUMENTATION SUPPORTING HIS OR HER EXPENSES CHARGED TO THE INSURER FOR AT LEAST TWELVE MONTHS AFTER THE COMPLETION OF THE MARKET CONDUCT EXAMINATION.

10-1-213. Confidentiality requirements. (1) (a) EXCEPT AS OTHERWISE PROVIDED BY LAW AND TO THE EXTENT PRACTICABLE, MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL HAVE FREE AND FULL ACCESS TO THE FOLLOWING DOCUMENTS OF AND PERSONS ASSOCIATED WITH THE INSURER DURING REGULAR BUSINESS HOURS:

(I) BOOKS;

(II) RECORDS, INCLUDING, BUT NOT LIMITED TO, ANY SELF-AUDIT DOCUMENTS;

(III) EMPLOYEES;

(IV) OFFICERS; AND

(V) DIRECTORS.

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

(c) ALL DOCUMENTS, INCLUDING, BUT NOT LIMITED TO, WORKING PAPERS, SELF-AUDIT DOCUMENTS, THIRD-PARTY MODELS OR PRODUCTS, COMPLAINT LOGS, AND COPIES OF ANY DOCUMENTS CREATED, PRODUCED, OBTAINED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER PERSON IN THE COURSE OF A MARKET CONDUCT ACTION TAKEN PURSUANT TO THIS PART 2 OR A MARKET ANALYSIS CONDUCTED BY THE COMMISSIONER OF THE MARKET CONDITIONS OF AN INSURER OR ALL DOCUMENTS OBTAINED BY THE NAIC AS A RESULT OF ANY OF THE PROVISIONS OF THIS PART 2 SHALL BE GIVEN CONFIDENTIAL TREATMENT BY THE COMMISSIONER, THE DIVISION, AND MARKET CONDUCT SURVEILLANCE PERSONNEL, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE MADE PUBLIC BY THE COMMISSIONER OR ANY OTHER PERSON EXCEPT AS PROVIDED IN SECTION 10-1-212 (8). SELF-AUDIT DOCUMENTS VOLUNTARILY DISCLOSED TO THE COMMISSIONER OR OTHER PERSON BY AN INSURER, OTHER THAN IN THE COURSE OF A MARKET CONDUCT ACTION OR MARKET ANALYSIS, SHALL BE GIVEN CONFIDENTIAL TREATMENT BY THE COMMISSIONER, THE DIVISION, AND MARKET CONDUCT SURVEILLANCE PERSONNEL, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE MADE PUBLIC BY THE COMMISSIONER OR ANY OTHER PERSON EXCEPT AS PROVIDED IN SECTION 10-1-212 (8).

(2) A WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR INFORMATION SHALL NOT OCCUR AS A RESULT OF DISCLOSURE TO THE COMMISSIONER UNDER THIS SECTION.

(3) MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL BE VESTED WITH THE POWER TO ISSUE SUBPOENAS AND EXAMINE INSURANCE COMPANY PERSONNEL UNDER OATH WHEN THE COMMISSIONER ORDERS SUCH ACTION PURSUANT TO THIS PART 2.

(4) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, IN ORDER TO ASSIST IN THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE COMMISSIONER MAY:

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

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

(c) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF INFORMATION

CONSISTENT WITH THIS SECTION.

10-1-214. Market conduct surveillance personnel. (1) MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL BE QUALIFIED BY EDUCATION, EXPERIENCE, AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS. THE COMMISSIONER MAY SUPPLEMENT THE IN-HOUSE MARKET CONDUCT SURVEILLANCE STAFF WITH QUALIFIED OUTSIDE PROFESSIONAL ASSISTANCE IF THE COMMISSIONER DETERMINES THAT OUTSIDE ASSISTANCE IS NECESSARY.

(2) MARKET CONDUCT SURVEILLANCE PERSONNEL HAVE A DIRECT OR INDIRECT CONFLICT OF INTEREST IF THEY ARE AFFILIATED WITH THE MANAGEMENT OF, HAVE BEEN EMPLOYED BY, OR OWN A PECUNIARY INTEREST IN THE INSURER SUBJECT TO AN EXAMINATION UNDER THIS PART 2 WITHIN THE MOST RECENT FIVE YEARS PRIOR TO THE USE OF THE PERSONNEL. THIS SECTION SHALL NOT BE CONSTRUED TO AUTOMATICALLY PRECLUDE AN INDIVIDUAL FROM BEING:

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

(b) A GRANTEE OF A MORTGAGE OR SIMILAR INSTRUMENT ON THE INDIVIDUAL'S RESIDENCE FROM A REGULATED ENTITY IF DONE UNDER CUSTOMARY TERMS AND IN THE ORDINARY COURSE OF BUSINESS;

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

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

10-1-215. Fines and penalties. (1) FINES AND PENALTIES LEVIED AS A RESULT OF A MARKET CONDUCT ACTION OR OTHER ACTION ENFORCING THIS PART 2 SHALL BE CONSISTENT, REASONABLE, AND JUSTIFIED.

(2) THE COMMISSIONER:

(a) SHALL TAKE INTO CONSIDERATION ACTIONS TAKEN BY INSURERS TO MAINTAIN MEMBERSHIP IN, AND COMPLY WITH THE STANDARDS OF, BEST-PRACTICE ORGANIZATIONS THAT PROMOTE HIGH ETHICAL STANDARDS OF CONDUCT IN THE MARKETPLACE AND THE EXTENT TO WHICH INSURERS MAINTAIN REGULATORY COMPLIANCE PROGRAMS TO SELF-ASSESS, SELF-REPORT, AND REMEDIATE PROBLEMS DETECTED; AND

(b) MAY INCLUDE THE CONSIDERATIONS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2) IN DETERMINING THE APPROPRIATE FINES LEVIED IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION.

10-1-216. Participation in national market conduct databases. (1) THE COMMISSIONER SHALL COLLECT AND REPORT MARKET DATA TO THE NAIC'S MARKET INFORMATION SYSTEMS, INCLUDING THE COMPLAINT DATABASE SYSTEM, THE EXAMINATION TRACKING SYSTEM, AND THE REGULATORY INFORMATION RETRIEVAL SYSTEM, OR OTHER SUCCESSOR NAIC PRODUCTS AS DETERMINED BY THE COMMISSIONER.

(2) COMPLAINTS REPORTED TO THE NAIC COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT, SHALL BE REPORTED IN ACCORDANCE WITH NAIC GUIDELINES. HOWEVER, BEFORE PUBLICATION OF INSURER-SPECIFIC COMPLAINT INFORMATION BY THE DIVISION, INSURANCE INDUSTRY PERSONNEL SHALL BE GIVEN THE OPPORTUNITY TO REVIEW COLORADO-SPECIFIC COMPLAINTS ASSIGNED TO THEIR COMPANY IN THE DIVISION'S COMPLAINTS DATABASE AND REQUEST THAT CORRECTIONS BE MADE TO THE DATA. THE DIVISION SHALL REVIEW INSURER OBJECTIONS TO ASSIGNED COMPLAINTS BEFORE PUBLISHING INSURER-SPECIFIC COMPLAINTS INFORMATION AND SHALL MAKE CORRECTIONS TO THE DIVISIONS' COMPLAINTS DATABASE WHEN APPROPRIATE. IF THE DIVISION MAKES CORRECTIONS TO ITS COMPLAINTS DATABASE BASED ON ERRORS IDENTIFIED BY AN INSURER, THE CORRECTED DATA SHALL BE SENT TO THE NAIC COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT. THE DIVISION SHALL ENSURE THAT INSURERS HAVE UNTIL AT LEAST JANUARY 31 TO REVIEW COMPLAINTS DATA FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR. IN ORDER FOR AN INSURER'S OBJECTIONS TO ITS COMPLAINTS DATA INFORMATION TO BE CONSIDERED, THE INSURER SHALL REVIEW AND REQUEST ANY CORRECTIONS TO THE PRIOR CALENDAR YEAR'S COMPLAINTS DATA NO LATER THAN JANUARY 31.

(3) INFORMATION COLLECTED AND MAINTAINED BY THE DIVISION SHALL BE COMPILED IN A MANNER THAT MEETS THE REQUIREMENTS OF THE NAIC.

10-1-217. Coordination with other states through the NAIC. THE COMMISSIONER SHALL SHARE INFORMATION AND COORDINATE THE DIVISION'S MARKET ANALYSIS AND EXAMINATION EFFORTS WITH OTHER STATES THROUGH THE NAIC.

10-1-218. Additional duties of the commissioner. (1) AT LEAST ONCE A YEAR AND MORE FREQUENTLY IF DEEMED NECESSARY, THE COMMISSIONER SHALL MAKE AVAILABLE TO INSURERS AND OTHER ENTITIES SUBJECT TO THIS TITLE INFORMATION ON NEW LAWS AND RULES, ENFORCEMENT ACTIONS, AND OTHER INFORMATION THE COMMISSIONER DEEMS PERTINENT TO ENSURE COMPLIANCE WITH MARKET CONDUCT REQUIREMENTS. THE COMMISSIONER SHALL DETERMINE AN APPROPRIATE MANNER IN WHICH TO PROVIDE THE INFORMATION TO INSURERS. THE FAILURE OF THE COMMISSIONER TO PROVIDE ANY SUCH INFORMATION SHALL NOT BE A DEFENSE FOR ANY INSURER THAT FAILS TO COMPLY WITH AN INSURANCE LAW OR RULE OF THIS STATE.

(2) (a) THE COMMISSIONER SHALL DESIGNATE A SPECIFIC PERSON OR PERSONS WITHIN THE DIVISION WHOSE RESPONSIBILITIES SHALL INCLUDE THE RECEIPT OF INFORMATION FROM EMPLOYEES OF INSURERS AND LICENSED ENTITIES CONCERNING VIOLATIONS OF LAWS OR RULES BY INSURERS. THE DESIGNATED PERSON OR PERSONS SHALL BE PROVIDED WITH PROPER TRAINING ON THE HANDLING OF THE INFORMATION, INCLUDING PROCEDURES TO MAINTAIN THE CONFIDENTIALITY OF THE COMMUNICATION FOR PURPOSES OF THIS SECTION.

(b) THE INFORMATION RECEIVED PURSUANT TO THIS SUBSECTION (2) IS A CONFIDENTIAL COMMUNICATION AND IS NOT PUBLIC INFORMATION.

SECTION 5. 10-1-207, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

10-1-207. Immunity from liability - prohibited activity. (5) AN INSURER SHALL NOT TAKE ANY RETALIATORY PERSONNEL ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE PROVIDES INFORMATION TO OR TESTIFIES BEFORE THE COMMISSIONER CONDUCTING A MARKET CONDUCT INVESTIGATION INTO THE PRACTICES OF THE INSURER.

(6)(a) AN EMPLOYEE WHO HAS BEEN THE SUBJECT OF A RETALIATORY PERSONNEL ACTION IN VIOLATION OF SUBSECTION (5) OF THIS SECTION MAY INSTITUTE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR RELIEF WITHIN ONE YEAR AFTER THE DATE OF THE ALLEGED RETALIATORY ACTION.

(b) A COURT OF COMPETENT JURISDICTION MAY ORDER RELIEF AS FOLLOWS:

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

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

(III) COMPENSATION FOR LOST WAGES AND BENEFITS.

(c) UPON A DETERMINATION THAT AN INSURER HAS TAKEN A RETALIATORY PERSONNEL ACTION, THE COURT MAY AWARD COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY FEES.

SECTION 6. Effective date - applicability. (1) This act shall take effect January 1, 2007.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to insurer market conduct occurring on or after the applicable effective date of this act.

Approved: May 17, 2006