

1 **(b) “Complaint” means a written or documented oral communication to the commissioner**
2 **primarily expressing a grievance, meaning an expression of dissatisfaction. For healthcare**
3 **companies, a grievance is a written complaint submitted by or on behalf of a covered person.**

4 **(c) “Comprehensive market conduct examination” means a review of one or more lines**
5 **of business of an insurer domiciled in this state that is not conducted for cause. The term includes**
6 **a review of rating, tier classification, underwriting, policyholder service, claims, marketing and**
7 **sales, producer licensing, complaint handling practices, or compliance procedures and policies.**

8 **(d) “Market conduct action” means any of the full range of activities that the**
9 **commissioner may initiate to assess the market and practices of individual insurers, beginning**
10 **with market analysis and extending to targeted examinations. The commissioner’s activities to**
11 **resolve an individual consumer complaint or other reports of a specific instance of misconduct are**
12 **not market conduct actions for purposes of this chapter.**

13 **(e) “Market analysis” means a process whereby market conduct surveillance personnel**
14 **collect and analyze information from filed schedules, surveys, required reports and other sources**
15 **in order to develop a baseline and to identify patterns or practices of insurers licensed to do**
16 **business in this state that deviate significantly from the norm or that may pose a potential risk to**
17 **the insurance consumer.**

18 **(f) “Market conduct examination” means the examination of the insurance operations of**
19 **an insurer licensed to do business in this state in order to evaluate compliance with the applicable**
20 **laws and regulations of this state. A market conduct examination may be either a comprehensive**
21 **examination or a targeted examination. A market conduct examination is separate and distinct**
22 **from a financial examination of an insurer performed pursuant to the Rhode Island general laws,**
23 **but may be conducted at the same time.**

24 **(g) “Market conduct surveillance personnel” means those individuals employed or**
25 **contracted by the commissioner to collect, analyze, review or act on information on the insurance**
26 **marketplace, which identifies patterns or practices of insurers.**

27 **(h) “National Association of Insurance Commissioners” (NAIC) means the organization**
28 **of insurance regulators from the fifty (50) states, the District of Columbia, and the four U.S.**
29 **territories.**

30 **(i) “NAIC” market regulation handbook” means a handbook, developed and adopted by**
31 **the NAIC, or successor product, which:**

32 **(A) outlines elements and objectives of market analysis and the process by which states**
33 **can establish and implement market analysis programs; and**

34 **(B) sets up guidelines that document established practices to be used by market conduct**

1 surveillance personnel in developing and executing an examination.

2 (j) “NAIC market conduct uniform examination procedures” means the set of guidelines
3 developed and adopted by the NAIC designed to be used by market conduct surveillance
4 personnel in conducting an examination.

5 (k) “NAIC” standard data request” means the set of field names and descriptions
6 developed and adopted by the NAIC for use by market conduct surveillance personnel in an
7 examination.

8 (l) “Qualified contract examiner” means a person under contract to the commissioner,
9 who is qualified by education, experience and, where applicable, professional designations, to
10 perform market conduct actions.

11 (m) “Targeted examination” means a focused exam conducted for cause, based on the
12 results of market analysis indicating the need to review either a specific line of business or
13 specific business practices, including but not limited to, underwriting and rating, marketing and
14 sales, complaint handling operations/management, advertising materials, licensing, policyholder
15 services, non-forfeitures, claims handling, or policy forms and filings. A targeted examination
16 may be conducted by desk examination or by an on-site examination:

17 (1) “Desk examination” means a targeted examination that is conducted by an examiner
18 at a location other than the insurer’s premises. A desk examination is usually performed at the
19 department of business regulation’s offices with the insurer providing requested documents by
20 hard copy, microfiche, discs, or other electronic media, for review; and

21 (2) “On-site examination” means a targeted examination conducted at the insurer’s home
22 office or the location where the records under review are stored.

23 (n) “Third-party model or product” means a model or product provided by an entity
24 separate from and not under directed or indirect corporate control of the insurer using the model
25 or product.

26 **27-71-4. Domestic responsibility and deference to other states.** – (a) The
27 commissioner is authorized to conduct market conduct examinations as deemed necessary by the
28 commissioner for Rhode Island policyholder protection, which shall be accomplished by
29 comprehensive or targeted examinations of domestic insurers and targeted examinations of
30 foreign insurers, based on the results of market analysis. The commissioner may delegate
31 responsibility for conducting an examination of a domestic insurer, foreign insurer, or an affiliate
32 of an insurer to the insurance commissioner of another state if that insurance commissioner agrees
33 to accept the delegated responsibility for the examination.

34 (b) The commissioner may delegate such responsibility to a commissioner of a state in

1 which the domestic insurer, foreign insurer, or affiliate has a significant number of policies or
2 significant premium volume.

3 (c) If the commissioner elected to delegate responsibility for examining an insurer, the
4 commissioner shall accept a report of the examination prepared by the commissioner to whom the
5 responsibility has been delegated.

6 (d) In lieu of conducting a market conduct examination of an insurer, the commissioner
7 shall accept a report of a market conduct examination on such insurer prepared by the insurance
8 commissioner of the insurer's state of domicile or another state, unless:

9 (1) The laws of that state applicable to the subject of the examination are not deemed by
10 the commissioner to be substantially similar to those of this state;

11 (2) The examining state does not have market conduct surveillance system that the
12 commissioner deems comparable to the market conducted surveillance system required under this
13 chapter; or

14 (3) The examination from the other state's commissioner has not be conducted within the
15 past three (3) years.

16 (e) If the insurance commissioner or the designee to whom the examination responsibility
17 was delegated pursuant to paragraph (a) of this section or the report of a market conduct
18 examination prepared by the insurance commissioner of another state pursuant to paragraph (d) of
19 this section, did not evaluate the specific area or issue of concern to the commissioner or a
20 specific requirement of Rhode Island law, the commissioner may pursue a targeted examination
21 or market analysis of the unexamined area pursuant to this statute.

22 (f) The commissioner's determination under subsection (d) is discretionary with the
23 commissioner and is not subject to appeal.

24 (g) Subject to a determination under subsection (d), if a market conduct examination
25 conducted by another state results in a finding that an insurer should modify a specific practice or
26 procedure, the commissioner shall accept documentation that the insurer has made a similar
27 modification in the state, in lieu of initiating a market conduct action or examination related to
28 that practice or procedure. The commissioner may require other or additional practice or
29 procedure modifications as are necessary to achieve compliance with specific state laws or
30 regulations, which differ substantially from those of the state that conducted the examination.

31 **27-71-5. Market analysis procedures.** – (a)(1) The commissioner shall gather
32 information as deemed necessary from data currently available, as well as surveys and required
33 reporting requirements, information collected by the NAIC and a variety of other objective
34 sources in both the public and private sectors including law enforcement inquiries.

1 (2) Such information, when collected, shall be analyzed in order to develop a baseline
2 understanding of the marketplace and to identify for further review insurers and/or practices that
3 deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
4 The commissioner shall use the NAIC Market Regulation Handbook as one resource in
5 performing this analysis (or procedures, adopted by regulation, that are substantially similar to the
6 foregoing NAIC product).

7 (3) The commissioner shall perform the analysis described under this section by:

8 (i) Identifying key lines of business for systematic review;

9 (ii) Identifying companies for further analysis based on available information.

10 (b) If the analysis compels the commissioner to inquire further into a particular insurer or
11 practice, the following continuum of market conduct actions may be considered prior to
12 conducting a targeted, on-site market conduct examination. The action selected shall be made
13 known to the insurer in writing if the action involves insurer participation or response. These
14 actions may include, but are not limited to:

15 (1) Correspondence with insurer;

16 (2) Insurer interviews;

17 (3) Information gathering;

18 (4) Policy and procedure reviews;

19 (5) Interrogatories;

20 (6) Review of insurer self-evaluation (if not subject to a privilege of confidentiality) and
21 compliance programs, including membership in a best-practice organization; and

22 (7) Desk examinations.

23 (c) The commissioner shall select a market conduct action that is efficient for the
24 department of business regulation and the insurer, while still protecting the insurance consumer.

25 (d) The commissioner shall take those steps reasonably necessary to eliminate requests
26 for information that duplicate information provided as part of an insurer's annual financial
27 statement, the annual market conduct statement of the National Association of Insurance
28 Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the
29 commissioner, or with data requests made by other states if that information is available to the
30 commissioner, unless the information is state specific, and coordinate market conduct actions and
31 findings with other states.

32 (e) Causes or conditions, if indentified through market analysis, that may trigger a target
33 examination, included but are not limited to:

34 (1) Information obtained from a market conduct annual statement, market survey or

1 report of financial examination indicating potential fraud, that the insurer is conducting the
2 business of insurance without a license or is engaged in a potential pattern of violation of the
3 general laws or law enforcement inquiry.

4 (2) A number of complaints against the insurer or a complaint ratio sufficient to indicate
5 potential fraud, conducting the business of insurance without a license, or a potential pattern of
6 unfair trade practice in violation of the general laws. For the purposes of this section, a complaint
7 ratio shall be determined for each line of business.

8 (3) Information obtained from other objective sources, such as published advertising
9 materials indicating potential fraud, conducting the business of insurance without a license, or
10 evidencing a potential pattern of unfair trade practice in violation of the general laws.

11 (4) Patterns of violations of the general laws and administrative regulations promulgated
12 thereunder that cause consumer harm.

13 **27-71-6. Protocols for market conduct actions.** – (a) Market conduct actions taken as a
14 result of a market analysis shall focus on the general business practices and compliance activities
15 of insurers, rather than identifying infrequent or unintentional random errors that do not cause
16 consumer harm.

17 (b)(1) The commissioner is authorized to determine the frequency and timing of such
18 market conduct actions. The timing shall depend upon the specific market conducted action to be
19 initiated, unless extraordinary circumstances indicating a risk to consumers require immediate
20 action.

21 (2) If the commissioner has information that more than one insurer is engaged in common
22 practices that may violate statute or regulations, he or she may schedule and coordinate multiple
23 examinations simultaneously.

24 (c) The insurer shall be given an opportunity to resolve such matters that arise as a result
25 of market analysis to the satisfaction of the commissioner before any additional market conduct
26 actions are taken against the insurer. If the insurer has modified such practice or procedure as a
27 result of a market conduct action taken by the commissioner of another state, the commissioner
28 shall accept appropriate documentation that the insurer has satisfactorily modified the practice or
29 procedure and made similar modification to such practice or procedure in this state. The
30 commissioner may require other or additional practice or procedure modifications as are
31 necessary to achieve compliance with specific state laws or regulations, which differ substantially
32 from those of the state conducted the examination.

33 **27-71-7. Protocols for targeted market conduct examinations.** – (a) When the
34 commissioner identifies through market analysis a pattern of conduct or practice by an insurer

1 which requires further investigation, and less intrusive market conduct actions identified in
2 subsection 27-71-5(b) are not appropriate, the commissioner has the discretion to conduct
3 targeted, market conduct examinations in accordance with the NAIC Market Conduct Uniform
4 Examination Procedures and the Market Regulation Handbook (or procedures, adopted by
5 regulation, that are substantially similar to the foregoing NAIC products).

6 (b) If the insurer to be examined is not a domestic insurer, the commissioner may
7 communicate with and may coordinate the examination with the insurance commissioner of the
8 state in which the insurer is organized.

9 (c) Concomitant with the notification requirements established in subsection (e) of this
10 section, the commissioner shall post notification on the NAIC Examination Tracking System, or
11 comparable NAIC product as determined by the commissioner, that a market conduct
12 examination has been scheduled.

13 (d) The commissioner may not conduct a comprehensive market conduct examination
14 more frequently than once every three (3) years. The commissioner may decide not to conduct a
15 comprehensive market conduct examination based on market analysis.

16 (e)(1) Prior to commencement of a targeted on-site market conducted examination,
17 market conduct surveillance personnel shall prepare a work plan and proposed budget. Such
18 proposed budget, which shall be reasonable for the scope of the examination, and work plan shall
19 be provided to the company under examination.

20 (2) Market conduct examinations shall, to the extent feasible, utilize desk examinations
21 and data requests prior to a targeted on-site examination.

22 (3) Market conduct examinations shall be conducted in accordance with the provisions
23 set forth the in the NAIC Market Regulation Handbook and the NAIC Market Conduct Uniform
24 Examinations Procedures (or procedures, adopted by regulation, that are substantially similar to
25 the foregoing NAIC products).

26 (4) Prior to the conclusion of a market conduct examination, the individual among the
27 market conduct surveillance personnel who is designated as the examiner-in-charge shall
28 schedule an exit conference with the insurer.

29 (f) Announcement of the examination shall be sent to the insurer and posted on the
30 NAIC's Examination Tracking System (or comparable NAIC product, as determined by the
31 commissioner) as soon as possible but in no case later than sixty (60) days before the estimated
32 commencement of the examination, unless extraordinary circumstances indicating a risk to
33 consumers requires immediate action. Such announcement to the insurer shall contain:

34 (1) The name and address of the insurer(s) being examined;

- 1 (2) The name and contact information of the examiner-in-charge;
- 2 (3) The reason(s) for and the scope of the targeted examination;
- 3 (4) The date the examination is scheduled to begin;
- 4 (5) Identification of any non-insurance department personnel who will assist in the
5 examination, if known at the time the notice is prepared;
- 6 (6) A time estimate for the examination;
- 7 (7) A budget and work plan fore the examination and identification of reasonable and
8 necessary costs and fees that will be included in the bill, if the cost of the examination is billed to
9 the company; and
- 10 (8) A request for the insurer to name its examination coordinator.
- 11 (g) If a targeted examination is expanded beyond the reasons provided to the insurer in
12 the notice of the examination required under this section, the commissioner shall provide written
13 notice to the insurer, explaining the extent of the expansion and the reasons for the expansion.
14 The department shall provide a revised work plan to the insurer before the beginning of any
15 significantly expanded examination, unless extraordinary circumstances indicating a risk to
16 consumers require immediate action.
- 17 (h) The commissioner shall conduct a pre-examination conference with the insurer
18 examination coordinator and key personnel to clarify expectations thirty (30) days prior to
19 commencement of the examination.
- 20 (i) The department shall use the NAIC Standard Data Request (or comparable product,
21 adopted by regulation, that is substantially similar to the foregoing NAIC product).
- 22 (1) A company responding to a commissioner’s request to produce information shall
23 product it as it is kept in the usual course of business or shall organize and label it to correspond
24 with the categories in the demand.
- 25 (2) If a commissioner’s request does not specify the form or forms for producing
26 electronically stored information, a company responding to the request must produce the
27 information in a form or forms in which the company ordinarily maintains it or in a form or forms
28 that are reasonably usable.
- 29 (3) A company responding to an information request need not produce the same
30 electronically stored information in more than one form.
- 31 (j)(1) The commissioner shall adhere to the following timeline, unless a mutual
32 agreement is reached with the insurer to modify the timeline:
- 33 (a) The commissioner shall deliver the draft report to the insurer within sixty (60) days of
34 the completion of the examination. Completion of the examination shall be defined as the date

1 the commissioner confirms in writing that the examination is completed.

2 (b) The insurer must respond with written comments within thirty (30) days of receipt of
3 the draft report.

4 (c) The department shall make a good faith effort to resolve issues and prepare a final
5 report within thirty (30) days of receipt of the insurer's written comments, unless a mutual
6 agreement is reached to extend the deadline. The commissioner may make corrections and other
7 changes, as appropriate.

8 (d) The insurer shall, within thirty (30) days, of receipt of the final report, file a written
9 response to all comments and recommendations contained in the report. The response shall
10 include a written plan of how and when the comments and recommendations contained in the
11 examination report will be corrected and/or implemented. For each comment and
12 recommendation, the response must include an implementation date and a completion date for
13 each corrective action. In lieu of these requirements, the company may submit a rebuttal to any
14 comment or recommendation contained in the examination report. An additional thirty (30) days
15 shall be allowed if agreed to by the commissioner and the insurer.

16 (2) The final written and electronic publicly available market conduct report shall include
17 the insurer's written response and any agreed-to corrections or changes. The response may be
18 included either as an appendix or in text of the examination reports. References to specific
19 individuals by name shall be limited to an acknowledgement of their involvement in the conduct
20 of the examination.

21 (k)(1) Upon adoption of the examination report pursuant to subsections 27-13.1-5 (c)
22 through (f), the commissioner shall continue to hold the content of the examination report as
23 private and confidential for a period of thirty (30) days, except to the extent provided in the
24 paragraph (k)(2) of this subsection herein. During this time, the report shall not be subject to
25 subpoena and shall not be subject to discovery or admissible in evidence in any private action.
26 Thereafter, the commissioner shall open the report for public inspection, provided no court of
27 competent jurisdiction has stayed its publication. This section may not be construed to limit the
28 commissioner's authority to use any final or preliminary market conduct examination report, and
29 examiner or company work papers or other documents, or any other information discovered or
30 developed during the course of an examination in the furtherance of any legal or regulatory action
31 that the commissioner, in the commissioner's sole discretion may deem appropriate.

32 (2) Nothing contained in this chapter shall prevent or be construed as preventing the
33 commissioner from disclosing the content of an examination report, preliminary examination
34 report or results, or any matter relating thereto, to the insurance department of this or any other

1 state or agency of the federal government at any time, provided the agency or office receiving the
2 report or matters relating thereto agrees to hold it confidential and in a manner consistent with
3 this chapter.

4 (l) The insurer may appeal the order adopting the examination report in accordance with
5 the procedures set forth in subsection 27-13.1-5(d) and the administrative procedures act, title 42,
6 chapter 35.

7 **27-71-8. Confidentiality requirements.** – (a) Except as otherwise provided by law,
8 market conduct surveillance personnel shall have free and full access to all books and records,
9 employees, officers and directors, as practicable, of the insurer during regular business hours. An
10 insurer utilizing a third-party model or product for any of the activities under examination shall
11 cause, upon the request of market conduct surveillance personnel, the details of such models or
12 products to be made available to such personnel. All documents, whether from a third-party or an
13 insurer, including, but not limited to, working papers, third-party models or products, complaint
14 logs, and copies thereof, created, produced or obtained by or disclosed to the commissioner or
15 any other person in the course of any market conduct actions made pursuant to this chapter, or in
16 the course of market analysis by the commissioner of the market conditions of an insurer, or
17 obtained by the NAIC as a result of any of the provisions of this chapter, shall be confidential by
18 law and privileged, shall not be subject to subpoena and shall not be subject to discovery or
19 admissible in evidence in any private civil action. The commissioner will work with an insurer to
20 assure that the insurer's privacy and information security procedures are not compromised as a
21 result of or in connection with an examination.

22 (b) No waiver of any applicable privilege or claim of confidentiality in the documents,
23 materials, or information shall occur as a result of disclosure to the commissioner under this
24 section.

25 (c) Market conduct surveillance personnel shall be vested with the power to issue
26 subpoenas and examine insurance company personnel under oath when such action is ordered by
27 the commissioner.

28 (d) Notwithstanding the provisions of paragraph (a) of this subsection, in order to assist
29 in the performance of the commissioner's duties, the commissioner may:

30 (1) share documents, materials, or other information, including the confidential and
31 privileged documents, materials or information subject to paragraph (a), with other state, federal
32 and international regulatory agencies and law enforcement authorities and the NAIC and its
33 affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to
34 maintain the confidentiality and privileged status of the document, material, communication or

1 other information;

2 (2) receive documents, materials, communications, or information, including otherwise
3 confidential and privileged documents, materials, or information, from the NAIC and its affiliates
4 or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic
5 jurisdictions, and shall maintain as confidential or privileged any documents, materials or
6 information received with notice or the understanding that it is confidential or privileged under
7 the laws of the jurisdiction that is the source of the document, material or information;

8 (3) enter into agreements governing the sharing and use of information consistent with
9 this subsection; and

10 (4) notwithstanding the provisions of this section, no insurer shall be compelled to waive
11 any statutory or common law privilege, but may voluntarily disclose such document to the
12 commissioner in response to any market analysis, market conduct action or examination as
13 provided in this chapter.

14 **27-71-9. Market conduct surveillance personnel.** – (a) Market conduct surveillance
15 personnel shall be qualified by education, experience and, where applicable, professional
16 designations. The commissioner may supplement the in-house market conduct surveillance staff
17 with qualified outside professional assistance if he or she determines that such assistance is
18 necessary.

19 (b) market conduct surveillance personnel have a conflict of interest, either directly or
20 indirectly, if they are affiliated with the management, have been employed by , or own a
21 pecuniary interest in the insurer subject to any examination under this chapter within the most
22 recent five (5) years prior to the use of the personnel. This section shall not be construed to
23 automatically preclude an individual from being:

24 (1) A policyholder or claimant under an insurance policy;

25 (2) A grantee of a mortgage or similar instrument on the individual’s residence from a
26 regulated entity if done under customary terms and in the ordinary course of business;

27 (3) An investment owner in shares of regulated diversified investment companies; or

28 (4) A settlor or beneficiary of a “blind trust” into which any otherwise permissible
29 holdings have been placed.

30 **27-71-10. Immunity for market conduct surveillance personnel.** – (a) No cause of
31 action shall arise nor shall any liability be imposed against the commissioner, the commissioner’s
32 authorized representatives or an examiner appointed by the commissioner for any statements
33 made or conduct performed in good faith while carrying out the provisions of this chapter.

34 (b) No cause of action shall arise, nor shall any liability be imposed against any person

1 for the act of communicating or delivering information or data to the commissioner or the
2 commissioner's authorized representative or examiner pursuant to an examination made under
3 this chapter, if the act of communication or delivery was performed in good faith and without
4 fraudulent intent or the intent to deceive.

5 (c) A person identified in subsection(a) shall be entitled to an award of attorneys' fees
6 and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any
7 other relevant tort arising out of activities in carrying out the provisions of this chapter and the
8 party bringing the action was not substantially justified in doing so. For purposes of this section a
9 proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it
10 was initiated.

11 (d) This section does not abrogate or modify in any way any common law or statutory
12 privilege or immunity heretofore enjoyed by an person identified in subsection (a).

13 **27-71-11. Fines and penalties.** – (a) Fines and penalties levied pursuant to this chapter or
14 other provisions of the general laws shall be consistent, reasonable and justified.

15 (b) The commissioner shall take into consideration actions taken by insurers that maintain
16 membership in best-practice organizations that exist to promote high ethical standards of conduct
17 in the marketplace, and insurers that self-assess, self-report and remediate problems detected to
18 mitigate fines levied pursuant to this chapter.

19 **27-71-12. Data collection and participation in national market conduct databases.** –
20 The commissioner shall collect and report market data to the NAIC's market information
21 systems, including the complaint database system, the examination tracking system, and the
22 regulatory information retrieval system, or other comparable successor NAIC products as
23 determined by the commissioner. In addition to complaint data, the accuracy of insurer-specific
24 information reported to the NAIC to be used for market analysis purposes or as the basis for
25 market conduct actions shall be reviewed by appropriate personnel in the department of business
26 regulation and by the insurer.

27 (a) Information collected and maintained by the department of business regulation shall
28 be compiled in a manner that meets the requirements of the NAIC.

29 (b) After completion of any level of market analysis, prior to further market conduct
30 action, the state shall contact the insurer to review the analysis.

31 (c)(1) A company responding to a commissioner's request to produce information shall
32 produce it as it is kept in the usual course of business or shall organize and label it to correspond
33 with the categories in the demand.

34 (2) If a commissioner's request does not specify the form or forms for producing

1 electronically stored information, a company responding to the request must produce the
2 information in a form or forms in which the company ordinarily maintains it or in a form or forms
3 that are reasonably usable.

4 (3) A company responding to an information request need not produce the same
5 electronically stored information in more than one form.

6 (d) Whether through market analysis, market conduct action, or in response to another
7 regulatory request, any information provided in response to a data call from the commissioner
8 shall be treated as confidential and privileged. It shall not be subject to subpoena and shall not be
9 subject to discovery or admissible in evidence in any private civil action. No waiver of privilege
10 or confidentiality shall occur as a result of responding to such data call.

11 **27-71-13. Coordination with other states through the NAIC.** – The commissioner
12 shall share information and coordinate the department of business regulation’s market analysis
13 and examination efforts with other states through the NAIC.

14 **27-71-14. Additional duties of the commissioner** – (a) At least once per year, or more
15 frequently if deemed necessary, the commissioner shall make available in an appropriate manner
16 to insurers and other entities subject to the scope of this chapter information on new laws and
17 regulations, and other information the commissioner deems pertinent to ensure compliance with
18 market conduct requirements. The failure to the commissioner to provide information shall not
19 be a defense for an insurer that fails to comply with any insurance laws of this state.

20 (b) Insurers who wish to receive the information indicated in (a) above shall provide to
21 the commissioner, in a form specified by the commissioner, contact information. The insurer is
22 responsible for keeping that contact information up to date and informing the commissioner of
23 any changes.

24 (c) The commissioner shall designate a specific person or persons whose responsibilities
25 shall include the receipt of information from employees of insurers and licensed entities
26 concerning violations of laws, rules or regulations by employers, as defined in this section. Such
27 person or persons shall be provided with proper training on the handling of such information,
28 which shall be deemed a confidential communication for the purposes of this section.

29 (d) For any change made by the commissioner to procedures, guidelines, handbooks or
30 other work products of the NAIC referenced in this chapter, which materially changes the way in
31 which market analysis, market conducted actions, or market conduct examinations are conducted,
32 the commissioner shall give notice and provide parties with an opportunity for a public hearing
33 pursuant to the administrative procedures act, chapter 42-35.

34 **27-71-15. Cost of market analysis and examination.** – (a) The total cost of market

1 analysis and examinations performed pursuant to this chapter shall be borne by the companies
2 analyzed and/or examined in accordance with the provisions of subdivision 27-13.1-7(a)(1).

3 (b) The commissioner shall maintain active management and oversight of examination
4 costs and fees, including costs and fees associated with the use of department personnel and
5 examiners and with retaining qualified contract examiners necessary to perform an examination.
6 To the extent the commissioner retains outside assistance, the commissioner must have in writing
7 protocols that:

8 (1) Clearly identify the types of functions to be subject to outsourcing;
9 (2) Provide specific timelines for completion of the outsourced review;
10 (3) Require disclosure of contract examiners' recommendations;
11 (4) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts
12 with insurers regarding examination costs and fees; and

13 (5) Require disclosure of the terms of the contracts with the outside consultants that will
14 be used specifically the costs and fees and/or hourly rates that can be charged.

15 (c) The commissioner shall review and affirmatively endorse detailed billings from the
16 qualified contract examiner before summary billings are sent to the insurer.

17 (d) The commissioner may contract for such qualified contract examiners as the
18 commissioner deems necessary, provided that the compensation and per diem allowances paid to
19 such contract persons shall not exceed one hundred twenty-five percent (125%) of the
20 compensation and per diem allowances for examiners set forth in the guidelines adopted by the
21 Nation Association of Insurance Commissioners, unless the commissioner demonstrates that one
22 hundred twenty-five percent (125%) is inadequate under the circumstances of the examination.
23 The commissioners may make an exception to this requirement for compensation paid to
24 contracted persons with unique expertise, however, such compensation shall be reasonable and
25 abased on market conditions.

26 SECTION 2. This act shall take effect upon passage.

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LC02300/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE

- 1 This act would create the Market Conduct Surveillance Act in order to establish a
- 2 framework for insurance market conduct actions.
- 3 This act would take effect upon passage.

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LC02300/SUB A
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