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SENATE BILL 5717

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Berkey, Hobbs, Prentice, Hatfield and Franklin; by request of Insurance Commissioner

Read first time 01/29/2007. Referred to Committee on Financial Institutions & Insurance.

1            AN ACT Relating to the establishment of a program of market conduct  
2 oversight within the office of the insurance commissioner; reenacting  
3 and amending RCW 42.56.400; adding a new section to chapter 48.03 RCW;  
4 adding a new chapter to Title 48 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 48.03 RCW  
7 to read as follows:

8            This chapter applies to the financial analysis and examination of  
9 insurers and other regulated entities.

10           NEW SECTION.    **Sec. 2.** SHORT TITLE. This chapter may be known and  
11 cited as the market conduct oversight law.

12           NEW SECTION.    **Sec. 3.** PURPOSE AND LEGISLATIVE INTENT. The purpose  
13 of this chapter is to establish a framework for the commissioner's  
14 market conduct actions, including:

15           (1) Processes and systems for identifying, assessing, and  
16 prioritizing market conduct problems that have a substantial adverse  
17 impact on consumers, policyholders, and claimants;

1 (2) Market conduct actions by a commissioner to substantiate such  
2 market conduct problems and a means to remedy significant market  
3 conduct problems; and

4 (3) Procedures to communicate and coordinate market conduct actions  
5 among state insurance regulators to foster the most efficient and  
6 effective use of resources.

7 NEW SECTION. **Sec. 4.** SCOPE. This chapter applies to all entities  
8 regulated by this title, and to all persons or entities acting as or  
9 holding themselves out as insurers in this state, unless otherwise  
10 exempted from the provisions of this title.

11 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this  
12 section apply throughout this chapter unless the context clearly  
13 requires otherwise.

14 (1) "Best practices organization" means insurance marketplace  
15 standards association or a similar generally recognized organization  
16 whose purpose and central mission is the promotion of high ethical  
17 standards in the insurance marketplace.

18 (2) "Commissioner" means the insurance commissioner of this state.

19 (3) "Complaint" means a written or documented oral communication  
20 primarily expressing a grievance, meaning an expression of  
21 dissatisfaction.

22 (4) "Insurer" means every person engaged in the business of making  
23 contracts of insurance and includes every such entity regardless of  
24 name which is regulated by this title. For purposes of this chapter,  
25 health care service contractors defined in chapter 48.44 RCW, health  
26 maintenance organizations defined in chapter 48.46 RCW, fraternal  
27 benefit societies defined in chapter 48.36A RCW, and self-funded  
28 multiple employer welfare arrangements defined in chapter 48.125 RCW  
29 are defined as insurers.

30 (5) "Market analysis" means a process whereby market conduct  
31 oversight personnel collect and analyze information from filed  
32 schedules, surveys, required reports, and other sources in order to  
33 develop a baseline understanding of the marketplace and to identify  
34 patterns or practices of insurers that deviate significantly from the  
35 norm or that may pose a potential risk to the insurance consumer.

1 (6) "Market conduct action" means any of the full range of  
2 activities that the commissioner may initiate to assess and address the  
3 market conduct practices of insurers admitted to do business in this  
4 state, and entities operating illegally in this state, beginning with  
5 market analysis and extending to examinations. The commissioner's  
6 activities to resolve an individual consumer complaint or other report  
7 of a specific instance of misconduct are not market conduct actions for  
8 purposes of this chapter.

9 (7) "Market conduct oversight personnel" means those individuals  
10 employed or contracted by the commissioner to collect, analyze, review,  
11 or act on information on the insurance marketplace that identifies  
12 patterns or practices of insurers.

13 (8) "National association of insurance commissioners" (NAIC) has  
14 the same meaning as in RCW 48.02.140.

15 (9) "NAIC market regulation handbook" means the outline of the  
16 elements and objectives of market analysis developed and adopted by the  
17 NAIC, and the process by which states can establish and implement  
18 market analysis programs, and the set of guidelines developed and  
19 adopted by the NAIC that document established practices to be used by  
20 market conduct oversight personnel in developing and executing an  
21 examination, or a successor product.

22 (10) "NAIC market conduct uniform examination procedures" means the  
23 set of guidelines developed and adopted by the NAIC designed to be used  
24 by market conduct oversight personnel in conducting an examination, or  
25 a successor product.

26 (11) "NAIC standard data request" means the set of field names and  
27 descriptions developed and adopted by the NAIC for use by market  
28 conduct oversight personnel in market analysis, market conduct  
29 examination, or other market conduct actions, or a successor product.

30 (12) "Qualified contract examiner" means a person under contract to  
31 the commissioner, who is qualified by education, experience, and, where  
32 applicable, professional designations, to perform market conduct  
33 actions.

34 (13)(a) "Market conduct examination" means the examination of the  
35 insurance operations of an insurer licensed to do business in this  
36 state and entities operating illegally in this state, in order to  
37 evaluate compliance with the applicable laws and regulations of this  
38 state. A market conduct examination may be either a comprehensive

1 examination or a targeted examination. A market conduct examination is  
2 separate and distinct from a financial examination of any insurer  
3 performed pursuant to chapter 48.03, 48.44, or 48.46 RCW, but may be  
4 conducted at the same time.

5 (b) "Comprehensive market conduct examination" means a review of  
6 one or more lines of business of an insurer. The term includes a  
7 review of rating, tier classification, underwriting, policyholder  
8 service, claims, marketing and sales, producer licensing, complaint  
9 handling practices, or compliance procedures and policies.

10 (c) "Targeted examination" means a focused examination, based on  
11 the results of market analysis indicating the need to review either a  
12 specific line or lines of business, or specific business practices,  
13 including but not limited to: (i) Underwriting and rating; (ii)  
14 marketing and sales; (iii) complaint handling; (iv) operations and  
15 management; (v) advertising; (vi) licensing; (vii) policyholder  
16 services; (viii) nonforfeitures; (ix) claims handling; and (x) policy  
17 forms and filings. A targeted examination may be conducted by desk  
18 examination or by an on-site examination.

19 (d) "Desk examination" means an examination that is conducted by an  
20 examiner at a location other than the insurer's premises. A desk  
21 examination is usually performed at the commissioner's offices with the  
22 insurer providing requested documents by hard copy, microfiche, discs,  
23 or other electronic media, for review.

24 (e) "On-site examination" means an examination conducted at the  
25 insurer's home office or the location where the records under review  
26 are stored.

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

30 (15) "Insurance compliance self-evaluative audit" means a  
31 voluntary, internal evaluation, review, assessment, audit, or  
32 investigation for the purpose of identifying or preventing  
33 noncompliance with, or promoting compliance with laws, regulations,  
34 orders, or industry or professional standards, which is conducted by or  
35 on behalf of a company licensed or regulated under the insurance laws  
36 of this state, or which involves an activity regulated under this  
37 title.

1 (16) "Insurance compliance self-evaluative audit document" means  
2 documents prepared as a result of or in connection with an insurance  
3 compliance self-evaluative audit. An insurance compliance self-  
4 evaluative audit document may include:

5 (a) A written response to the findings of an insurance compliance  
6 self-evaluative audit;

7 (b) Any supporting information that is collected or developed for  
8 the primary purpose and in the course of an insurance compliance self-  
9 evaluative audit, including but not limited to field notes and records  
10 of observations, findings, opinions, suggestions, conclusions, drafts,  
11 memoranda, drawings, photographs, exhibits, computer generated or  
12 electronically recorded information, phone records, maps, charts,  
13 graphs, and surveys;

14 (c) Any of the following:

15 (i) An insurance compliance self-evaluative audit report prepared  
16 by an auditor, who may be an employee of the company or an independent  
17 contractor, which may include the scope of the audit, the information  
18 gained in the audit, conclusions, and recommendations, with exhibits  
19 and appendices;

20 (ii) Memoranda and documents analyzing portions or all of the  
21 insurance compliance self-evaluative audit report and discussing  
22 potential implementation issues;

23 (iii) An implementation plan that addresses correcting past  
24 noncompliance, improving current compliance, and preventing future  
25 noncompliance; or

26 (iv) Analytic data generated in the course of conducting the  
27 insurance compliance self-evaluative audit.

28 NEW SECTION. **Sec. 6.** MARKET ANALYSIS PROCEDURES. (1)(a) The  
29 commissioner shall collect and report market data information  
30 to the NAIC's market information systems, including the complaint data  
31 base system, the examination tracking system, the regulatory retrieval  
32 system, other successor systems, or to additional systems as the  
33 commissioner determines is necessary for market analysis.

34 (b) Market data and information that is collected and maintained by  
35 the commissioner shall be compiled and submitted in a manner that meets  
36 the requirements of the NAIC and its systems.

1 (2)(a) Each entity subject to the provisions of this chapter shall  
2 file a market conduct annual statement, in the general form and  
3 context, in the time frame required by, and according to instructions  
4 provided by the NAIC, for each line of business written in the state of  
5 Washington. If a particular line of business does not have an approved  
6 market conduct annual statement form, the company is not required to  
7 file a report for that line of business until such time as NAIC adopts  
8 an annual statement form for that line of business.

9 (b) The commissioner may, for good cause, grant an extension of  
10 time for filing a market conduct annual statement, if written  
11 application for extension is received at least five business days  
12 before the filing due date. Any insurer that fails to file its market  
13 conduct annual statement when due or by the end of any extension of  
14 time for filing, which the commissioner in his or her sole discretion  
15 may have granted, is subject to the penalty and enforcement provisions  
16 applicable to the insurer as found in the Washington insurance code.

17 (3)(a) The commissioner shall gather information from data  
18 currently available to the commissioner, surveys, required reports,  
19 information collected by the NAIC, other sources in both the public or  
20 private sectors, and information from within and outside the insurance  
21 industry. The commissioner may request insurers to submit data and  
22 information that is necessary to conduct market analysis.

23 (b) The information shall be analyzed in order to develop a  
24 baseline understanding of the marketplace and to identify for further  
25 review insurers or practices that deviate significantly from the norm  
26 or that may pose a potential risk to the insurance consumer. The  
27 commissioner shall use the NAIC market regulation handbook as one  
28 resource in performing this analysis.

29 (c) The commissioner shall adopt by rule a process for verification  
30 by an insurer of Washington state-specific complaint information  
31 concerning that insurer before using the complaint information for  
32 market conduct surveillance purposes or transmitting it to NAIC data  
33 bases after July 1, 2007.

34 (4)(a) If the commissioner determines, as a result of market  
35 analysis, that further inquiry into a particular insurer or practice is  
36 needed, the following continuum of market actions may be considered  
37 before conducting a market conduct examination. The commissioner shall  
38 not be required to follow the exact sequence of market conduct actions

1 in the continuum or to use all actions in the continuum prior to  
2 selecting the appropriate action in the specific circumstance. The  
3 action selected shall be made known to the insurer, in writing, if the  
4 action involves insurer participation or response. These actions may  
5 include, but are not limited to:

6 (i) Correspondence with the insurer;

7 (ii) Insurer interviews;

8 (iii) Information gathering;

9 (iv) Policy and procedure reviews;

10 (v) Interrogatories;

11 (vi) Review of insurer self-evaluation and compliance programs.

12 This may include consideration of the insurer's membership in a best  
13 practices organization, if the commissioner is satisfied that the  
14 organization's qualification process is likely to provide reasonable  
15 assurance of compliance with pertinent insurance laws;

16 (vii) Desk examinations; and

17 (viii) Investigations.

18 (b) Except in extraordinary circumstances, the commissioner shall  
19 select the least intrusive and most cost-effective market conduct  
20 action that the commissioner determines will provide the necessary  
21 protections for consumers.

22 (5) The commissioner shall take those steps reasonably necessary to  
23 eliminate duplicative inquiries and coordinate market conduct actions  
24 and findings with other state insurance regulators.

25 (6) For purposes of conducting an examination or other market  
26 conduct action on an insurer, the commissioner may examine or conduct  
27 a market conduct action on any managing general agent or other person,  
28 insofar as that examination or market conduct action is, in the sole  
29 discretion of the commissioner, necessary or material to the  
30 examination or market conduct action of the insurer.

31 NEW SECTION. **Sec. 7.** PROTOCOLS FOR MARKET CONDUCT ACTIONS. (1)  
32 Market conduct actions shall be taken as a result of market analysis  
33 and shall focus on the general business practices and compliance  
34 activities of insurers, rather than identifying obviously infrequent or  
35 unintentional random errors that do not cause significant consumer  
36 harm.

1 (2)(a) The commissioner is authorized to determine the frequency  
2 and timing of such market conduct actions. The timing shall depend  
3 upon the specific market conduct action to be initiated, unless  
4 extraordinary circumstances indicating a risk to consumers require  
5 immediate action.

6 (b) If the commissioner has information that more than one insurer  
7 is engaged in common practices that may violate statutes or rules, the  
8 commissioner may schedule and coordinate multiple examinations  
9 simultaneously.

10 (3) The insurer shall be given reasonable opportunity to resolve  
11 matters that arise as a result of a market analysis to the satisfaction  
12 of the commissioner before any additional market conduct actions are  
13 taken against the insurer.

14 (4) The commissioner shall adopt by rule, under chapter 34.05 RCW,  
15 procedures and documents that are substantially similar to the NAIC  
16 work products defined or referenced in this chapter. Market analysis,  
17 market conduct actions, and market conduct examinations shall be  
18 performed in accordance with the rule.

19 NEW SECTION. **Sec. 8.** MARKET CONDUCT EXAMINATIONS. (1) When the  
20 commissioner determines that other market conduct actions identified in  
21 section 6(4)(a) of this act have not sufficiently addressed issues  
22 raised concerning company activities in Washington state, the  
23 commissioner has the discretion to conduct market conduct examinations  
24 in accordance with the NAIC market conduct uniform examination  
25 procedures and the NAIC market regulation handbook.

26 (2)(a) In lieu of an examination of a foreign or alien insurer  
27 licensed in this state, the commissioner shall accept an examination  
28 report of another state, unless the commissioner determines that the  
29 other state does not have laws substantially similar to those of this  
30 state, or does not have a market oversight system that is comparable to  
31 the market conduct oversight system set forth in this law.

32 (b) The commissioner's determination under (a) of this subsection  
33 is discretionary with the commissioner and is not subject to appeal.

34 (c) If the insurer to be examined is part of an insurance holding  
35 company system, the commissioner may also seek to simultaneously  
36 examine any affiliates of the insurer under common control and



1 management which are licensed to write the same lines of business in  
2 this state.

3 (3) Before commencement of a market conduct examination, market  
4 conduct oversight personnel shall prepare a work plan consisting of the  
5 following:

- 6 (a) The name and address of the insurer being examined;
- 7 (b) The name and contact information of the examiner-in-charge;
- 8 (c) The name of all market conduct oversight personnel initially  
9 assigned to the market conduct examination;
- 10 (d) The justification for the examination;
- 11 (e) The scope of the examination;
- 12 (f) The date the examination is scheduled to begin;
- 13 (g) Notice of any noninsurance department personnel who will assist  
14 in the examination;
- 15 (h) A time estimate for the examination;
- 16 (i) A budget for the examination if the cost of the examination is  
17 billed to the insurer; and
- 18 (j) An identification of factors that will be included in the  
19 billing if the cost of the examination is billed to the insurer.

20 (4)(a) Within ten days of the receipt of the information contained  
21 in subsection (3) of this section, insurers may request the  
22 commissioner's discretionary review of any alleged conflict of  
23 interest, pursuant to section 11(2) of this act, of market conduct  
24 oversight personnel and noninsurance department personnel assigned to  
25 a market conduct examination. The request for review shall  
26 specifically describe the alleged conflict of interest in the proposed  
27 assignment of any person to the examination.

28 (b) Within five business days of receiving a request for  
29 discretionary review of any alleged conflict of interest in the  
30 proposed assignment of any person to a market conduct examination, the  
31 commissioner or designee shall notify the insurer of any action  
32 regarding the assignment of personnel to a market conduct examination  
33 based on the insurer's allegation of conflict of interest.

34 (5) Market conduct examinations shall, to the extent feasible, use  
35 desk examinations and data requests before an on-site examination.

36 (6) Market conduct examinations shall be conducted in accordance  
37 with the provisions set forth in the NAIC market regulation handbook

1 and the NAIC market conduct uniform examinations procedures, subject to  
2 the precedence of the provisions of this act.

3 (7) The commissioner shall use the NAIC standard data request.

4 (8) Announcement of the examination shall be sent to the insurer  
5 and posted on the NAIC's examination tracking system as soon as  
6 possible but in no case later than sixty days before the estimated  
7 commencement of the examination, except where the exam is conducted in  
8 response to extraordinary circumstances as described in section 7(2)(a)  
9 of this act. The announcement sent to the insurer shall contain the  
10 examination work plan and a request for the insurer to name its  
11 examination coordinator.

12 (9) If an examination is expanded significantly beyond the original  
13 reasons provided to the insurer in the notice of the examination  
14 required by subsection (3) of this section, the commissioner shall  
15 provide written notice to the insurer, explaining the expansion and  
16 reasons for the expansion. The commissioner shall provide a revised  
17 work plan if the expansion results in significant changes to the items  
18 presented in the original work plan required by subsection (3) of this  
19 section.

20 (10) The commissioner shall conduct a preexamination conference  
21 with the insurer examination coordinator and key personnel to clarify  
22 expectations at least thirty days before commencement of the  
23 examination, unless otherwise agreed by the insurer and the  
24 commissioner.

25 (11) Before the conclusion of the field work for market conduct  
26 examination, the examiner-in-charge shall review examination findings  
27 to date with insurer personnel and schedule an exit conference with the  
28 insurer, in accordance with procedures in the NAIC market regulation  
29 handbook.

30 (12)(a) No later than sixty days after completion of each market  
31 conduct examination, the commissioner shall make a full written report  
32 of each market conduct examination containing only facts ascertained  
33 from the accounts, records, and documents examined and from the sworn  
34 testimony of individuals, and such conclusions and recommendations as  
35 may reasonably be warranted from such facts.

36 (b) The report shall be certified by the commissioner or by the  
37 examiner-in-charge of the examination, and shall be filed in the  
38 commissioner's office subject to (c) of this subsection.

1 (c) The commissioner shall furnish a copy of the market conduct  
2 examination report to the person examined not less than ten days and,  
3 unless the time is extended by the commissioner, not more than thirty  
4 days prior to the filing of the report for public inspection in the  
5 commissioner's office. If the person so requests in writing within  
6 such period, the commissioner shall hold a hearing to consider  
7 objections of such person to the report as proposed, and shall not so  
8 file the report until after such hearing and until after any  
9 modifications in the report deemed necessary by the commissioner have  
10 been made.

11 (d) Within thirty days of the end of the period described in (c) of  
12 this subsection, unless extended by order of the commissioner, the  
13 commissioner shall consider the report, together with any written  
14 submissions or rebuttals and any relevant portions of the examiner's  
15 work papers and enter an order:

16 (i) Adopting the market conduct examination report as filed or with  
17 modification or corrections. If the market conduct examination report  
18 reveals that the company is operating in violation of any law, rule, or  
19 order of the commissioner, the commissioner may order the company to  
20 take any action the commissioner considers necessary and appropriate to  
21 cure that violation;

22 (ii) Rejecting the market conduct examination report with  
23 directions to the examiners to reopen the examination for purposes of  
24 obtaining additional data, documentation, or information, and refileing  
25 under this subsection; or

26 (iii) Calling for an investigatory hearing with no less than twenty  
27 days' notice to the company for purposes of obtaining additional  
28 documentation, data, information, and testimony.

29 (e) All orders entered under (d) of this subsection must be  
30 accompanied by findings and conclusions resulting from the  
31 commissioner's consideration and review of the market conduct  
32 examination report, relevant examiner work papers, and any written  
33 submissions or rebuttals. The order is considered a final  
34 administrative decision and may be appealed under the administrative  
35 procedure act, chapter 34.05 RCW, and must be served upon the company  
36 by certified mail, together with a copy of the adopted examination  
37 report. A copy of the adopted examination report must be sent by  
38 certified mail to each director at the director's residential address.

1 (f)(i) Upon the adoption of the market conduct examination report  
2 under (d) of this subsection, the commissioner shall continue to hold  
3 the content of the examination report as private and confidential  
4 information for a period of five days except that the order may be  
5 disclosed to the person examined. Thereafter, the commissioner may  
6 open the report for public inspection so long as no court of competent  
7 jurisdiction has stayed its publication.

8 (ii) If the commissioner determines that regulatory action is  
9 appropriate as a result of any market conduct examination, he or she  
10 may initiate any proceedings or actions as provided by law.

11 (iii) Nothing contained in this subsection requires the  
12 commissioner to disclose any information or records that would indicate  
13 or show the existence or content of any investigation or activity of a  
14 criminal justice agency.

15 (g) The insurer's response shall be included in the commissioner's  
16 order adopting the final report as an exhibit to the order. The  
17 insurer is not obligated to submit a response.

18 (13) The commissioner may withhold from public inspection any  
19 examination or investigation report for so long as he or she deems it  
20 advisable.

21 (14)(a) Market conduct examinations within this state of any  
22 insurer domiciled or having its home offices in this state, other than  
23 a title insurer, made by the commissioner or the commissioner's  
24 examiners and employees shall, except as to fees, mileage, and expense  
25 incurred as to witnesses, be at the expense of the state.

26 (b) Every other examination, whatsoever, or any part of the market  
27 conduct examination of any person domiciled or having its home offices  
28 in this state requiring travel and services outside this state, shall  
29 be made by the commissioner or by examiners designated by the  
30 commissioner and shall be at the expense of the person examined; but a  
31 domestic insurer shall not be liable for the compensation of examiners  
32 employed by the commissioner for such services outside this state.

33 (c) When making a market conduct examination under this chapter,  
34 the commissioner may contract, in accordance with applicable state  
35 contracting procedures, for qualified attorneys, appraisers,  
36 independent certified public accountants, contract actuaries, and other  
37 similar individuals who are independently practicing their professions,  
38 even though those persons may from time to time be similarly employed

1 or retained by persons subject to examination under this chapter, as  
2 examiners as the commissioner deems necessary for the efficient conduct  
3 of a particular examination. The compensation and per diem allowances  
4 paid to such contract persons shall be reasonable in the market and  
5 time incurred, and subject to the provisions of (a) of this subsection.

6 (d)(i) The person examined and liable shall reimburse the state  
7 upon presentation of an itemized statement thereof, for the actual  
8 travel expenses of the commissioner's examiners, their reasonable  
9 living expenses allowance, and their per diem compensation, including  
10 salary and the employer's cost of employee benefits, at a reasonable  
11 rate approved by the commissioner, incurred on account of the  
12 examination. Per diem, salary, and expenses for employees examining  
13 insurers domiciled outside the state of Washington shall be established  
14 by the commissioner on the basis of the national association of  
15 insurance commissioner's recommended salary and expense schedule for  
16 zone examiners, or the salary schedule established by the director of  
17 the Washington department of personnel and the expense schedule  
18 established by the office of financial management, whichever is higher.  
19 A domestic title insurer shall pay the examination expense and costs to  
20 the commissioner as itemized and billed by the commissioner.

21 (ii) The commissioner or the commissioner's examiners shall not  
22 receive or accept any additional emolument on account of any  
23 examination.

24 (iii) Market conduct examination fees subject to being reimbursed  
25 by an insurer shall be itemized and bills shall be provided to the  
26 insurer on a monthly basis for review prior to submission for payment,  
27 or as otherwise provided by state law.

28 (e) Nothing contained in this chapter limits the commissioner's  
29 authority to terminate or suspend any examination in order to pursue  
30 other legal or regulatory action under the insurance laws of this  
31 state. Findings of fact and conclusions made pursuant to any  
32 examination are prima facie evidence in any legal or regulatory action.

33 (f) The commissioner shall maintain active management and oversight  
34 of market conduct examination costs, including costs associated with  
35 the commissioner's own examiners, and with retaining qualified contract  
36 examiners necessary to perform an examination. Any agreement with a  
37 contract examiner shall:

1 (i) Clearly identify the types of functions to be subject to  
2 outsourcing;

3 (ii) Provide specific timelines for completion of the outsourced  
4 review;

5 (iii) Require disclosure to the insurer of contract examiners'  
6 recommendations;

7 (iv) Establish and use a dispute resolution or arbitration  
8 mechanism to resolve conflicts with insurers regarding examination  
9 fees; and

10 (v) Require disclosure of the terms of the contracts with the  
11 outside consultants that will be used, specifically the fees and/or  
12 hourly rates that can be charged.

13 (g) The commissioner, or the commissioner's designee, shall review  
14 and affirmatively endorse detailed billings from the qualified contract  
15 examiner before the detailed billings are sent to the insurer.

16 NEW SECTION. **Sec. 9.** ACCESS TO RECORDS AND INFORMATION. (1)

17 Except as otherwise provided by law, market conduct oversight personnel  
18 shall have free, convenient, and full access to all books, records,  
19 employees, officers, and directors, as practicable, of the insurer  
20 during regular business hours.

21 (2) An insurer using a third-party model or product for any of the  
22 activities under examination shall cause, upon the request of market  
23 conduct oversight personnel, the details of such models or products to  
24 be made available to such personnel.

25 (3) Each officer, director, employee, and agent of an insurer shall  
26 facilitate and aid in a market conduct action or examination.

27 (4) No waiver of any applicable privilege or claim of  
28 confidentiality in the documents, materials, or information shall occur  
29 as a result of disclosure to the commissioner, any employee of the  
30 office of the insurance commissioner, or any agent retained by the  
31 office of the insurance commissioner to assist in the market conduct  
32 examination under this chapter.

33 (5)(a) The commissioner may take depositions, subpoena witnesses or  
34 documentary evidence, administer oaths, and examine under oath any  
35 individual relative to the affairs of any person being examined, or  
36 relative to the subject of any hearing or investigation: PROVIDED,

1 That the provisions of RCW 34.05.446 shall apply in lieu of the  
2 provisions of this section as to subpoenas relative to hearings in  
3 rule-making and adjudicative proceedings.

4 (b) The subpoena shall be effective if served within the state of  
5 Washington and shall be served in the same manner as if issued from a  
6 court of record.

7 (c) Witness fees and mileage, if claimed, shall be allowed the same  
8 as for testimony in a court of record. Witness fees, mileage, and the  
9 actual expenses necessarily incurred in securing attendance of  
10 witnesses and their testimony shall be itemized, and shall be paid by  
11 the person as to whom the examination is being made, or by the person  
12 if other than the commissioner, at whose request the hearing is held.

13 (d) Enforcement of subpoenas shall be in accordance with RCW  
14 34.05.588.

15 (6) In order to assist in the performance of the commissioner's  
16 duties, the commissioner may:

17 (a) Share documents, materials, market conduct examination reports,  
18 preliminary market conduct examination reports, and other matters  
19 related to such reports, or other information, including the  
20 confidential and privileged documents, materials, or information  
21 subject to subsection (1) of this section, with other state, federal,  
22 and international regulatory agencies and law enforcement authorities,  
23 and the NAIC and its affiliates and subsidiaries, provided that the  
24 recipient agrees to and asserts that it has the legal authority to  
25 maintain the confidentiality and privileged status of the document,  
26 material, communication, or other information;

27 (b) Receive documents, materials, communications, or information,  
28 including otherwise confidential and privileged documents, materials,  
29 or information, from the NAIC and its affiliates or subsidiaries, and  
30 from regulatory and law enforcement officials of other foreign or  
31 domestic jurisdictions, and shall maintain as confidential or  
32 privileged any document, material, or information received with notice  
33 or the understanding that it is confidential or privileged under the  
34 laws of the jurisdiction that is the source of the document, material,  
35 or information; and

36 (c) Enter into agreements governing the sharing and use of  
37 information consistent with this subsection.

1        NEW SECTION.    **Sec. 10.**    CONFIDENTIALITY.        (1) All data and  
2 documents, including but not limited to working papers, third-party  
3 models or products, complaint logs, and copies thereof, created,  
4 produced, or obtained by or disclosed to the commissioner, the  
5 commissioner's authorized representative, or an examiner appointed by  
6 the commissioner in the course of any market conduct actions or  
7 examinations made under this chapter, or in the course of market  
8 analysis by the commissioner of the market conditions of an insurer, or  
9 obtained by the NAIC as a result of any of the provisions of this  
10 chapter, to the extent the documents are in the possession of the  
11 commissioner or the NAIC, shall be confidential by law and privileged,  
12 shall not be subject to the provisions of chapter 42.56 RCW, shall not  
13 be subject to subpoena, and shall not be subject to discovery or  
14 admissible in evidence in any private civil action.

15        (2) If the commissioner elects to issue a report of an examination,  
16 a preliminary or draft market conduct examination report is  
17 confidential and not subject to disclosure by the commissioner nor is  
18 it subject to subpoena or discovery. This subsection does not limit  
19 the commissioner's authority to use a preliminary or draft market  
20 conduct examination report and related information in furtherance of  
21 any legal or regulatory action, or to release it in accordance with the  
22 provisions of RCW 48.02.065.

23        (3) An insurance compliance self-evaluative audit document in the  
24 possession of the commissioner is confidential by law and privileged,  
25 and shall not be:

- 26        (a) Made public by the commissioner;  
27        (b) Subject to the provisions of chapter 42.56 RCW;  
28        (c) Subject to subpoena; and  
29        (d) Subject to discovery and admissible in evidence in any private  
30 civil action.

31        (4) The disclosure of any self-evaluative audit document to the  
32 commissioner or the commissioner's designee shall not constitute a  
33 waiver of any privilege that may otherwise apply.

34        NEW SECTION.    **Sec. 11.**    MARKET CONDUCT OVERSIGHT PERSONNEL.    (1)  
35 Market conduct oversight personnel shall be qualified by education,  
36 experience, and, where applicable, professional designations. The



1 commissioner may supplement the in-house market conduct oversight staff  
2 with qualified outside professional assistance if the commissioner  
3 determines that the assistance is necessary.

4 (2) Market conduct oversight personnel have a conflict of interest,  
5 either directly or indirectly, if they are affiliated with the  
6 management of, and have, within five years of any market conduct  
7 action, been employed by, or own a pecuniary interest in the insurer,  
8 subject to any examination under this chapter. This section shall not  
9 be construed to automatically preclude an individual from being:

10 (a) A policyholder or claimant under an insurance policy;

11 (b) A grantor of a mortgage or similar instrument on the  
12 individual's residence from a regulated entity, if done under customary  
13 terms and in the ordinary course of business;

14 (c) An investment owner in shares of regulated diversified  
15 investment companies; or

16 (d) A settlor or beneficiary of a "blind trust" into which any  
17 otherwise impermissible holdings have been placed.

18 NEW SECTION. Sec. 12. IMMUNITY FOR MARKET CONDUCT OVERSIGHT  
19 PERSONNEL. (1) No cause of action shall arise, nor shall any liability  
20 be imposed against the commissioner, the commissioner's authorized  
21 representatives, market conduct oversight personnel, or an examiner  
22 appointed by the commissioner for any statements made, or conduct  
23 performed in good faith while carrying out the provisions of this  
24 chapter.

25 (2) No cause of action shall arise, nor shall any liability be  
26 imposed against any person for the act of communicating or delivering  
27 information or data to the commissioner or the commissioner's  
28 authorized representative, market conduct oversight personnel, or  
29 examiner, under an examination made under this chapter, if the act of  
30 communication or delivery was performed in good faith and without  
31 fraudulent intent or the intent to deceive.

32 (3) A person identified in subsection (1) of this section is  
33 entitled to an award of attorneys' fees and costs if he or she is the  
34 prevailing party in a civil cause of action for libel, slander, or any  
35 other relevant tort arising out of activities in carrying out the  
36 provisions of this chapter, and the party bringing the action was not

1 substantially justified in doing so. For purposes of this section, a  
2 proceeding is "substantially justified" if it had a reasonable basis in  
3 law or fact at the time that it was initiated.

4 (4) If a claim is made or threatened as described in subsection (1)  
5 of this section, the commissioner shall provide or pay for the defense  
6 of himself or herself, the examiner or representative, and shall pay a  
7 judgment or settlement, until it is determined that the person did not  
8 act in good faith or did act with fraudulent intent or the intent to  
9 deceive.

10 (5) The immunity, indemnification, and other protections under this  
11 section are in addition to those now or hereafter existing under other  
12 law.

13 (6) This section does not abrogate or modify in any way any common  
14 law or statutory privilege or immunity, now or hereafter existing under  
15 this section or other law, enjoyed by any person identified in  
16 subsection (1) of this section.

17 NEW SECTION. **Sec. 13.** FINES AND PENALTIES. (1) Fines and  
18 penalties, applicable to the insurer as found in the Washington  
19 insurance code, levied as a result of a market conduct action or  
20 examination shall be consistent, reasonable, and justified.

21 (2) The commissioner shall take into consideration actions taken by  
22 insurers to maintain membership in, and comply with the standards of,  
23 best practices organizations, and the extent to which insurers maintain  
24 regulatory compliance programs to self-assess, self-report, and  
25 remediate problems detected, and may include those considerations in  
26 determining the appropriate fines or penalties levied in accordance  
27 with subsection (1) of this section.

28 NEW SECTION. **Sec. 14.** COORDINATION WITH OTHER STATE INSURANCE  
29 REGULATORS THROUGH THE NAIC. (1) The commissioner shall share  
30 information and coordinate the commissioner's market analysis, market  
31 conduct actions, and examination efforts with other state insurance  
32 regulators. Such matters will be coordinated in accordance with  
33 guidelines adopted by the NAIC.

34 (2)(a) If a market conduct examination or action performed by  
35 another state insurance regulator results in a finding that an insurer  
36 should modify a specific practice or procedure, the commissioner shall,

1 in lieu of conducting a market conduct action or examination, accept  
2 verification that the insurer made a similar modification in this  
3 state, unless the commissioner determines that the other state does not  
4 have laws substantially similar to those of this state, or does not  
5 have a market conduct oversight system that is comparable to the market  
6 conduct oversight system set forth in this chapter.

7 (b) The commissioner's determination under (a) of this subsection  
8 is discretionary with the commissioner and is not subject to appeal.

9 NEW SECTION. **Sec. 15.** ADDITIONAL DUTIES OF THE COMMISSIONER. The  
10 commissioner shall designate a specific person or persons within the  
11 commissioner's office whose responsibilities shall include the receipt  
12 of information from employees of insurers and licensed entities  
13 concerning violations of laws or rules by their employers, as defined  
14 in this chapter. These persons shall be provided with proper training  
15 on the handling of such information. The information shall be  
16 confidential and not open to public inspection.

17 **Sec. 16.** RCW 42.56.400 and 2006 c 284 s 17 and 2006 c 8 s 210 are  
18 each reenacted and amended to read as follows:

19 The following information relating to insurance and financial  
20 institutions is exempt from disclosure under this chapter:

21 (1) Records maintained by the board of industrial insurance appeals  
22 that are related to appeals of crime victims' compensation claims filed  
23 with the board under RCW 7.68.110;

24 (2) Information obtained and exempted or withheld from public  
25 inspection by the health care authority under RCW 41.05.026, whether  
26 retained by the authority, transferred to another state purchased  
27 health care program by the authority, or transferred by the authority  
28 to a technical review committee created to facilitate the development,  
29 acquisition, or implementation of state purchased health care under  
30 chapter 41.05 RCW;

31 (3) The names and individual identification data of all viators  
32 regulated by the insurance commissioner under chapter 48.102 RCW;

33 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

34 (5) Information provided under RCW 48.05.510 through 48.05.535,  
35 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
36 through 48.46.625;

1 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328  
2 that can be identified to a particular business;

3 (7) Examination reports and information obtained by the department  
4 of financial institutions from banks under RCW 30.04.075, from savings  
5 banks under RCW 32.04.220, from savings and loan associations under RCW  
6 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
7 and sellers under RCW 31.45.030(3), and from securities brokers and  
8 investment advisers under RCW 21.20.100, all of which is confidential  
9 and privileged information;

10 (8) Information provided to the insurance commissioner under RCW  
11 48.110.040(3);

12 (9) Documents, materials, or information obtained by the insurance  
13 commissioner under RCW 48.02.065, all of which are confidential and  
14 privileged;

15 (10) Confidential proprietary and trade secret information provided  
16 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
17 48.31C.070;

18 ~~(11) ((Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and~~  
19 ~~7.70.140 that, alone or in combination with any other data, may reveal~~  
20 ~~the identity of a claimant, health care provider, health care facility,~~  
21 ~~insuring entity, or self-insurer involved in a particular claim or a~~  
22 ~~collection of claims. For the purposes of this subsection:~~

23 ~~(a) "Claimant" has the same meaning as in RCW 48.140.010(2).~~

24 ~~(b) "Health care facility" has the same meaning as in RCW~~  
25 ~~48.140.010(6).~~

26 ~~(c) "Health care provider" has the same meaning as in RCW~~  
27 ~~48.140.010(7).~~

28 ~~(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).~~

29 ~~(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);~~

30 and

31 ~~(12))~~ Documents, materials, or information obtained by the  
32 insurance commissioner under ~~((RCW 48.135.060))~~ section 8 of this act;

33 (12) Confidential and privileged documents obtained or produced by  
34 the insurance commissioner and identified in section 10 of this act;  
35 and

36 (13) Documents, materials, or information obtained by the insurance  
37 commissioner under section 15 of this act.

1        NEW SECTION.   **Sec. 17.**   CAPTIONS NOT LAW.   Captions used in this  
2 chapter are not any part of the law.

3        NEW SECTION.   **Sec. 18.**   Sections 2 through 15 and 17 of this act  
4 constitute a new chapter in Title 48 RCW.

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