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**SUBSTITUTE SENATE BILL 5717**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Berkey, Hobbs, Prentice, Hatfield and Franklin; by request of Insurance Commissioner)

READ FIRST TIME 02/28/07.

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. (1) The  
13 purpose of this chapter is to establish a framework for the  
14 commissioner's market conduct actions, including:

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

4 (c) 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 (2) It is the intent of the legislature that the market analysis or  
8 market conduct process utilize available technology in the least  
9 intrusive and most cost-efficient manner to develop a baseline  
10 understanding of the market place and to identify insurers or practices  
11 that deviate significantly from the norm or that pose a potential risk  
12 to the insurance consumer. It is also the intent of the legislature  
13 that this process include discretion for the commissioner to use market  
14 conduct examinations when the continuum of available market conduct  
15 actions have not sufficiently addressed issues concerning insurer  
16 activities in Washington, or when the continuum of available market  
17 conduct actions are not reasonably expected to address issues  
18 concerning insurer activities in Washington.

19 (3) It is further the intent of the legislature that the  
20 commissioner work with the national association of insurance  
21 commissioners toward development of an accreditation process for market  
22 conduct oversight and an effective process for domestic deference that  
23 creates protections for Washington consumers and efficient and  
24 effective regulation of the industry.

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

29 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this  
30 section apply throughout this chapter unless the context clearly  
31 requires otherwise.

32 (1) "Best practices organization" means insurance marketplace  
33 standards association or a similar generally recognized organization  
34 whose purpose and central mission is the promotion of high ethical  
35 standards in the insurance marketplace.

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

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

4 (4) "Insurer" means every person engaged in the business of making  
5 contracts of insurance and includes every such entity regardless of  
6 name which is regulated by this title. For purposes of this chapter,  
7 health care service contractors defined in chapter 48.44 RCW, health  
8 maintenance organizations defined in chapter 48.46 RCW, fraternal  
9 benefit societies defined in chapter 48.36A RCW, and self-funded  
10 multiple employer welfare arrangements defined in chapter 48.125 RCW  
11 are defined as insurers.

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

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

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

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

32 (9) "NAIC market regulation handbook" means the outline of the  
33 elements and objectives of market analysis developed and adopted by the  
34 NAIC, and the process by which states can establish and implement  
35 market analysis programs, and the set of guidelines developed and  
36 adopted by the NAIC that document established practices to be used by  
37 market conduct oversight personnel in developing and executing an  
38 examination, or a successor product.

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

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

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

13 (13)(a) "Market conduct examination" means the examination of the  
14 insurance operations of an insurer licensed to do business in this  
15 state and entities operating illegally in this state, in order to  
16 evaluate compliance with the applicable laws and regulations of this  
17 state. A market conduct examination may be either a comprehensive  
18 examination or a targeted examination. A market conduct examination is  
19 separate and distinct from a financial examination of any insurer  
20 performed pursuant to chapter 48.03, 48.44, or 48.46 RCW, but may be  
21 conducted at the same time.

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

27 (c) "Targeted examination" means a focused examination conducted  
28 for cause, based on the results of market analysis indicating the need  
29 to review either a specific line or lines of business, or specific  
30 business practices, including but not limited to: (i) Underwriting and  
31 rating; (ii) marketing and sales; (iii) complaint handling; (iv)  
32 operations and management; (v) advertising; (vi) licensing; (vii)  
33 policyholder services; (viii) nonforfeitures; (ix) claims handling; and  
34 (x) policy forms and filings. A targeted examination may be conducted  
35 by desk examination or by an on-site examination.

36 (d) "Desk examination" means an examination that is conducted by an  
37 examiner at a location other than the insurer's premises. A desk

1 examination is usually performed at the commissioner's offices with the  
2 insurer providing requested documents by hard copy, microfiche, discs,  
3 or other electronic media, for review.

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

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

10 (15) "Insurance compliance self-evaluative audit" means a  
11 voluntary, internal evaluation, review, assessment, audit, or  
12 investigation for the purpose of identifying or preventing  
13 noncompliance with, or promoting compliance with laws, regulations,  
14 orders, or industry or professional standards, which is conducted by or  
15 on behalf of a company licensed or regulated under the insurance laws  
16 of this state, or which involves an activity regulated under this  
17 title.

18 (16) "Insurance compliance self-evaluative audit document" means  
19 documents prepared as a result of or in connection with an insurance  
20 compliance self-evaluative audit. An insurance compliance self-  
21 evaluative audit document may include:

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

24 (b) Any supporting information that is collected or developed for  
25 the primary purpose and in the course of an insurance compliance self-  
26 evaluative audit, including but not limited to field notes and records  
27 of observations, findings, opinions, suggestions, conclusions, drafts,  
28 memoranda, drawings, photographs, exhibits, computer generated or  
29 electronically recorded information, phone records, maps, charts,  
30 graphs, and surveys;

31 (c) Any of the following:

32 (i) An insurance compliance self-evaluative audit report prepared  
33 by an auditor, who may be an employee of the company or an independent  
34 contractor, which may include the scope of the audit, the information  
35 gained in the audit, conclusions, and recommendations, with exhibits  
36 and appendices;

37 (ii) Memoranda and documents analyzing portions or all of the

1 insurance compliance self-evaluative audit report and discussing  
2 potential implementation issues;

3 (iii) An implementation plan that addresses correcting past  
4 noncompliance, improving current compliance, and preventing future  
5 noncompliance; or

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

8 NEW SECTION. **Sec. 6.** MARKET ANALYSIS PROCEDURES. (1)(a) The

9 commissioner shall collect and report market data information  
10 to the NAIC's market information systems, including the complaint data  
11 base system, the examination tracking system, the regulatory retrieval  
12 system, other successor systems, or to additional systems as the  
13 commissioner determines is necessary for market analysis.

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

17 (2)(a) Each entity subject to the provisions of this chapter shall  
18 file a market conduct annual statement or successor product, in the  
19 general form and context, in the time frame required by, and according  
20 to instructions provided by the NAIC, for each line of business written  
21 in the state of Washington. If a particular line of business does not  
22 have an approved market conduct annual statement form, the company is  
23 not required to file a report for that line of business until such time  
24 as NAIC adopts an annual statement form for that line of business.

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

33 (3)(a) The commissioner shall gather information from data  
34 currently available to the commissioner, surveys, required reports,  
35 information collected by the NAIC, other sources in both the public or  
36 private sectors, and information from within and outside the insurance  
37 industry. The commissioner may request insurers to submit data and

1 information that is necessary to conduct market analysis and shall  
2 adopt rules that provide for access to records and compliance with the  
3 request, that do not cause undue burden or cost to the consumer or  
4 insurer.

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

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

16 (4)(a) If the commissioner determines, as a result of market  
17 analysis, that further inquiry into a particular insurer or practice is  
18 needed, the following continuum of market actions may be considered  
19 before conducting a market conduct examination. The commissioner shall  
20 not be required to follow the exact sequence of market conduct actions  
21 in the continuum or to use all actions in the continuum. As part of  
22 the chosen continuum action, the commissioner must discuss with the  
23 insurer the data used to choose the option and provide the insurer with  
24 an opportunity for data verification at that time. These actions may  
25 include, but are not limited to:

- 26 (i) Correspondence with the insurer;
- 27 (ii) Insurer interviews;
- 28 (iii) Information gathering;
- 29 (iv) Policy and procedure reviews;
- 30 (v) Interrogatories;
- 31 (vi) Review of insurer self-evaluation and compliance programs.  
32 This may include consideration of the insurer's membership in a best  
33 practices organization, if the commissioner is satisfied that the  
34 organization's qualification process is likely to provide reasonable  
35 assurance of compliance with pertinent insurance laws;
- 36 (vii) Desk examinations; and
- 37 (viii) Investigations.

1 (b) Except in extraordinary circumstances, the commissioner shall  
2 select the least intrusive and most cost-effective market conduct  
3 action that the commissioner determines will provide the necessary  
4 protections for consumers.

5 (5) The commissioner shall take those steps reasonably necessary to  
6 eliminate duplicative inquiries. The commissioner shall not request  
7 insurers to submit data or information provided as part of an insurer's  
8 annual financial statement, the annual market conduct statement of the  
9 NAIC, or other required schedules, surveys, or reports that are  
10 regularly submitted to the commissioner, or with data requests made by  
11 other states if that information is available to the commissioner,  
12 unless the information is state specific. The commissioner shall  
13 coordinate market conduct actions and findings with other state  
14 insurance regulators.

15 (6) For purposes of conducting an examination or other market  
16 conduct action on an insurer, the commissioner may examine or conduct  
17 a market conduct action on any managing general agent or other person,  
18 insofar as that examination or market conduct action is, in the sole  
19 discretion of the commissioner, necessary or material to the  
20 examination or market conduct action of the insurer.

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

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

32 (b) If the commissioner has information that more than one insurer  
33 is engaged in common practices that may violate statutes or rules, the  
34 commissioner may schedule and coordinate multiple examinations  
35 simultaneously.

36 (3) The insurer shall be given reasonable opportunity to resolve



1 matters that arise as a result of a market analysis to the satisfaction  
2 of the commissioner before any additional market conduct actions are  
3 taken against the insurer.

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

9 (5) At the beginning of the next legislative session after the  
10 adoption of the rules adopted under the authority of this section, the  
11 commissioner shall report to the appropriate policy committees of the  
12 legislature what rules were adopted; what statutory policies these  
13 rules were intended to implement; and such other matters as are  
14 indicated for the legislature's understanding of the role played by the  
15 NAIC in regulation of the insurance industry of Washington.

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

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

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

31 (c) If the insurer to be examined is part of an insurance holding  
32 company system, the commissioner may also seek to simultaneously  
33 examine any affiliates of the insurer under common control and  
34 management which are licensed to write the same lines of business in  
35 this state.

36 (3) Before commencement of a market conduct examination, market

1 conduct oversight personnel shall prepare a work plan consisting of the  
2 following:

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

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

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

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

33 (6) Market conduct examinations shall be conducted in accordance  
34 with the provisions set forth in the NAIC market regulation handbook  
35 and the NAIC market conduct uniform examinations procedures, subject to  
36 the precedence of the provisions of this act.

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

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

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

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

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

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

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

36 (c) The commissioner shall furnish a copy of the market conduct  
37 examination report to the person examined not less than ten days and,  
38 unless the time is extended by the commissioner, not more than thirty

1 days prior to the filing of the report for public inspection in the  
2 commissioner's office. If the person so requests in writing within  
3 such period, the commissioner shall hold a hearing to consider  
4 objections of such person to the report as proposed, and shall not so  
5 file the report until after such hearing and until after any  
6 modifications in the report deemed necessary by the commissioner have  
7 been made.

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

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

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

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

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

36 (f)(i) Upon the adoption of the market conduct examination report  
37 under (d) of this subsection, the commissioner shall continue to hold  
38 the content of the examination report as private and confidential

1 information for a period of five days except that the order may be  
2 disclosed to the person examined. Thereafter, the commissioner may  
3 open the report for public inspection so long as no court of competent  
4 jurisdiction has stayed its publication.

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

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

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

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

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

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

30 (c) When making a market conduct examination under this chapter,  
31 the commissioner may contract, in accordance with applicable state  
32 contracting procedures, for qualified attorneys, appraisers,  
33 independent certified public accountants, contract actuaries, and other  
34 similar individuals who are independently practicing their professions,  
35 even though those persons may from time to time be similarly employed  
36 or retained by persons subject to examination under this chapter, as  
37 examiners as the commissioner deems necessary for the efficient conduct  
38 of a particular examination. The compensation and per diem allowances

1 paid to such contract persons shall be reasonable in the market and  
2 time incurred, shall not exceed one hundred twenty-five percent of the  
3 compensation and per diem allowances for examiners set forth in the  
4 guidelines adopted by the national association of insurance  
5 commissioners, unless the commissioner demonstrates that one hundred  
6 twenty-five percent is inadequate under the circumstances of the  
7 examination, and subject to the provisions of (a) of this subsection.

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

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

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

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

35 (f) The commissioner shall maintain active management and oversight  
36 of market conduct examination costs, including costs associated with  
37 the commissioner's own examiners, and with retaining qualified contract

1 examiners necessary to perform an examination. Any agreement with a  
2 contract examiner shall:

3 (i) Clearly identify the types of functions to be subject to  
4 outsourcing;

5 (ii) Provide specific timelines for completion of the outsourced  
6 review;

7 (iii) Require disclosure to the insurer of contract examiners'  
8 recommendations;

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

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

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

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

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

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

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

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

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

1 relative to the subject of any hearing or investigation: PROVIDED,  
2 That the provisions of RCW 34.05.446 shall apply in lieu of the  
3 provisions of this section as to subpoenas relative to hearings in  
4 rule-making and adjudicative proceedings.

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

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

14 (d) Enforcement of subpoenas shall be in accordance with RCW  
15 34.05.588.

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

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

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

37 (c) Enter into agreements governing the sharing and use of  
38 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) Neither the disclosure of any self-evaluative audit document to  
32 the commissioner or to the commissioner's designee nor the citation to  
33 this document in connection with an agency action shall constitute a  
34 waiver of any privilege that may otherwise apply.

35        NEW SECTION.    **Sec. 11.**    MARKET CONDUCT OVERSIGHT PERSONNEL.    (1)  
36 Market conduct oversight personnel shall be qualified by education,  
37 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 (3) Commissioner enforcement actions shall not be based solely on  
29 violations identified in the insurer self-evaluative audit document,  
30 unless the commissioner confirms both that the violations occurred and  
31 that the insurer has not taken reasonable action based on the self-  
32 evaluative audit document to resolve and remediate the identified  
33 violations.

34 NEW SECTION. **Sec. 14.** DISPUTE RESOLUTION. (1) At any point in  
35 the market analysis, the insurer may request a review and resolution of  
36 issues by identifying the issues either orally or in writing to the

1 market conduct oversight manager, or deputy insurance commissioner  
2 responsible for market conduct oversight. At each level, a response to  
3 the insurer shall be provided within five business days.

4 (2) At any point in the market conduct examination, the insurer may  
5 request a review and resolution of issues either orally or in writing  
6 to the market conduct oversight manager, or deputy insurance  
7 commissioner responsible for market conduct oversight. At each level,  
8 a response to the insurer shall be provided within five business days.  
9 This authorization for dispute resolution shall be secondary to the  
10 specific procedures set forth in section 8 of this act.

11 (3) After the deputy insurance commissioner responsible for market  
12 conduct oversight has responded to an insurer's issues, the insurer may  
13 request mediation of the issues. The insurance commissioner shall  
14 adopt by rule a process to govern mediation of insurer market conduct  
15 oversight issues. That rule shall:

16 (a) Provide for the selection by the commissioner of a panel of  
17 preapproved mediators;

18 (b) Require that insurers, upon notice of the start of a market  
19 analysis process or the start of a market conduct examination, identify  
20 from the preapproved list a mediator and an alternative mediator;

21 (c) Require the party requesting mediation to pay the costs of the  
22 mediator; and

23 (d) Provide for other rule provisions as are reasonably necessary  
24 for the efficient operation of a mediation process.

25 (4) At any point in the dispute resolution process contained in  
26 this section, the insurer may commence an adjudicative proceeding under  
27 chapters 48.04 and 34.05 RCW.

28 NEW SECTION. **Sec. 15.** 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,  
37 in lieu of conducting a market conduct action or examination, accept

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

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

8 NEW SECTION. **Sec. 16.** ADDITIONAL DUTIES OF THE COMMISSIONER. (1)

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

16 (2) At least once per year, or more frequently if deemed necessary,  
17 the commissioner shall make available in an appropriate manner to  
18 insurers and other entities subject to the scope of this title,  
19 information on new laws and regulations, enforcement actions, and other  
20 information the commissioner deems pertinent to ensure compliance with  
21 market conduct requirements.

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

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

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

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

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

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

4 (5) Information provided under RCW 48.05.510 through 48.05.535,  
5 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
6 through 48.46.625;

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

9 (7) Examination reports and information obtained by the department  
10 of financial institutions from banks under RCW 30.04.075, from savings  
11 banks under RCW 32.04.220, from savings and loan associations under RCW  
12 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
13 and sellers under RCW 31.45.030(3), and from securities brokers and  
14 investment advisers under RCW 21.20.100, all of which is confidential  
15 and privileged information;

16 (8) Information provided to the insurance commissioner under RCW  
17 48.110.040(3);

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

21 (10) Confidential proprietary and trade secret information provided  
22 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
23 48.31C.070;

24 ~~(11) ((Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and~~  
25 ~~7.70.140 that, alone or in combination with any other data, may reveal~~  
26 ~~the identity of a claimant, health care provider, health care facility,~~  
27 ~~insuring entity, or self-insurer involved in a particular claim or a~~  
28 ~~collection of claims. For the purposes of this subsection:~~

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

30 ~~(b) "Health care facility" has the same meaning as in RCW~~  
31 ~~48.140.010(6).~~

32 ~~(c) "Health care provider" has the same meaning as in RCW~~  
33 ~~48.140.010(7).~~

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

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

36 and

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

1       (12) Confidential and privileged documents obtained or produced by  
2 the insurance commissioner and identified in section 10 of this act;  
3 and

4       (13) Documents, materials, or information obtained by the insurance  
5 commissioner under section 16 of this act.

6       NEW SECTION. Sec. 18. CAPTIONS NOT LAW. Captions used in this  
7 chapter are not any part of the law.

8       NEW SECTION. Sec. 19. Sections 2 through 16 and 18 of this act  
9 constitute a new chapter in Title 48 RCW.

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