

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5717

60th Legislature
2007 Regular Session

Passed by the Senate March 7, 2007
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 5, 2007
YEAS 96 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5717** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5717

Passed Legislature - 2007 Regular Session

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 insurance
38 commissioner under RCW 48.135.060;

1 (13) Documents, materials, or information obtained by the insurance
2 commissioner under section 8 of this act;

3 (14) Confidential and privileged documents obtained or produced by
4 the insurance commissioner and identified in section 10 of this act;
5 and

6 (15) Documents, materials, or information obtained by the insurance
7 commissioner under section 16 of this act.

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

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

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