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HOUSE BILL 17-1231

BY REPRESENTATIVE(S) Arndt and Lawrence, Thurlow, Melton;
also SENATOR(S) Tate and Smallwood, Baumgardner, Cooke, Crowder,
Hill, Jahn, Martinez Humenik, Scott, Sonnenberg, Grantham.

CONCERNING A REORGANIZATION OF STATUTES GOVERNING THE
AUTHORITY OF THE COMMISSIONER OF INSURANCE TO EXAMINE
COMPANIES ENGAGED IN THE BUSINESS OF INSURANCE IN THIS STATE.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-1-139,
10-1-140, and 10-1-141 as follows:

10-1-139. Confidentiality. (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, WHEN THE COMMISSIONER CONDUCTS AN INVESTIGATION, ALL DOCUMENTS, INCLUDING WORKING PAPERS, CLAIM FILES, RECORDED INFORMATION, ELECTRONIC MAIL, AND ALL COPIES OF THOSE DOCUMENTS, THAT ARE PRODUCED OR OBTAINED BY OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER PERSON IN THE COURSE OF THE INVESTIGATION SHALL BE TREATED AS CONFIDENTIAL UNTIL THE COMMISSIONER CONCLUDES THE INVESTIGATION. AFTER AN INVESTIGATION IS CONCLUDED, THE RECORDS ARE SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

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

(2) THIS SECTION DOES NOT APPLY TO AN EXAMINATION CONDUCTED PURSUANT TO PART 2 OF THIS ARTICLE 1 OR TO A MARKET CONDUCT SURVEILLANCE CONDUCTED PURSUANT TO PART 3 OF THIS ARTICLE 1.

10-1-140. Subpoena authority. THE DIVISION MAY ISSUE SUBPOENAS, ADMINISTER OATHS, AND EXAMINE UNDER OATH ANY PERSON AS TO ANY MATTER RELEVANT TO THE REGULATORY AUTHORITY OF THE DIVISION. UPON THE FAILURE OR REFUSAL OF A PERSON TO OBEY A SUBPOENA, THE DIVISION MAY PETITION A COURT OF COMPETENT JURISDICTION FOR AN ORDER, WHICH ORDER IS ENFORCEABLE THROUGH CONTEMPT PROCEEDINGS, COMPELLING THE PERSON TO APPEAR AND TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. THE COMMISSIONER MAY ARRANGE FOR THE SERVICES OF AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24 TO TAKE EVIDENCE AND TO MAKE FINDINGS AND REPORT THEM TO THE COMMISSIONER.

10-1-141. Investigations - rules. (1) THE COMMISSIONER MAY CONTRACT, PURSUANT TO SECTION 24-50-504 (2)(c) AND (2)(e), WITH A PERSON THAT HAS TECHNICAL OR SUBJECT MATTER EXPERTISE OR SKILL AND EXPERIENCE IN INVESTIGATIVE TECHNIQUES TO ASSIST THE DIVISION IN PERFORMING INVESTIGATIONS OF A COMPANY OR PRODUCER PURSUANT TO THIS TITLE 10 WHEN THE COMMISSIONER DETERMINES THAT THE DIVISION LACKS SUFFICIENT TECHNICAL EXPERTISE TO PERFORM THE INVESTIGATION. INVESTIGATIONS CONDUCTED PURSUANT TO THIS SECTION DO NOT INCLUDE MARKET CONDUCT SURVEILLANCE ACTIONS CONDUCTED PURSUANT TO PART 3 OF THIS ARTICLE 1. THE COMMISSIONER SHALL, BY RULE, ESTABLISH WHEN CONTRACT INVESTIGATORS MAY BE USED FOR INVESTIGATIONS. THE RULES MUST INCLUDE OUT-OF-STATE TRAVEL REQUIREMENTS, CRITERIA FOR WHEN SPECIAL EXPERTISE IS REQUIRED FOR THE INVESTIGATION, AND A REQUIREMENT THAT THERE MUST BE A SIGNIFICANT PATTERN OF COMPLAINTS OR A WELL-DOCUMENTED ALLEGATION AGAINST A COMPANY FOR AN INVESTIGATION TO BE WARRANTED.

(2) THE INVESTIGATED COMPANY OR PRODUCER SHALL PAY THE REASONABLE FEES AND EXPENSES OF A PERSON RETAINED OR DESIGNATED FOR INVESTIGATIONS OF THE COMPANY OR PRODUCER PURSUANT TO SUBSECTION (1) OF THIS SECTION DIRECTLY TO THE RETAINED OR DESIGNATED PERSON, AS DETERMINED BY THE COMMISSIONER. THE

INVESTIGATED COMPANY OR PRODUCER MAY CONTEST THE AMOUNT OF FEES AND EXPENSES CHARGED BY THE RETAINED OR DESIGNATED PERSON BY FILING AN OBJECTION WITH THE COMMISSIONER, SETTING FORTH THE CHARGES THAT THE INVESTIGATED COMPANY OR PRODUCER CONSIDERS TO BE UNREASONABLE AND THE BASIS FOR THE CLAIM THAT THE CHARGES ARE UNREASONABLE. A DISPUTED AMOUNT IS NOT DUE UNLESS THE COMMISSIONER REVIEWS THE OBJECTION AND MAKES A WRITTEN FINDING THAT THE DISPUTED CHARGES WERE REASONABLE IN RELATION TO THE INVESTIGATION PERFORMED.

SECTION 2. In Colorado Revised Statutes, **amend** 10-1-202 as follows:

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

(1) "Company" means any person or group of persons engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to any administrative, regulatory, or taxing authority of the commissioner as well as any advisory organization or rating organization as defined in section 10-4-402.

~~(1.5) "Complaint" means a written or documented oral communication primarily expressing a grievance or an expression of dissatisfaction.~~

~~(1.7) "Desk examination" means an examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed in the offices of the division with the insurer providing requested documents by hard copy, microfiche, discs, or other electronic media for review.~~

~~(2) "Division" means the division of insurance.~~

~~(3) (2) "Examination" means a formal financial examination, or market conduct examination, as well as informal investigations EXAMINATIONS, conducted by the commissioner for the purpose of determining compliance with the law. Market conduct examinations may include routine, targeted, follow-up, multistate, or desk examinations.~~

~~(4)~~ (3) "Examiner" means any individual or firm authorized by the commissioner to conduct an examination under this part 2.

(4) "INFORMAL EXAMINATION" MEANS ALL INQUIRIES BY THE DIVISION INTO THE FINANCIAL CONDITION OF A COMPANY, OTHER THAN THE FORMAL FINANCIAL EXAMINATION OF A COMPANY THAT MUST BE CONDUCTED ONCE EVERY FIVE YEARS PURSUANT TO SECTION 10-1-203 (1).

(5) "Insurance department" means the commissioner or other government official or agency of a state other than Colorado exercising powers and duties substantially equivalent to those of the commissioner or the division.

(6) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the commissioner or any equivalent insurance supervisory official of another state.

~~(7) "Market analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose risk to the insurance consumer.~~

~~(8) "Market conduct action" means any of the full range of activities that the commissioner may initiate to assess and address the market practices of insurers licensed to conduct business in this state, from market analysis to targeted, on-site examinations. The commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for the purposes of this part 2.~~

~~(9) "Market conduct surveillance personnel" means those individuals employed by or under contract with the commissioner to collect, analyze, review, or act on information about the insurance marketplace that identifies patterns or practices of insurers.~~

~~(10)~~ (7) "NAIC" or "national association of insurance

commissioners" means the organization of insurance regulators from the fifty states, the District of Columbia, and the four United States territories.

~~(11) "NAIC market analysis handbook" means the outline of the elements and objectives of market analysis developed and adopted by the NAIC and the process by which states can establish and implement market analysis programs, or its successor document.~~

~~(12) "NAIC market conduct examiner's handbook" means the set of guidelines developed and adopted by the NAIC that documents established practices to be used by market conduct surveillance personnel in developing and executing an examination, or its successor document.~~

~~(13) "NAIC market conduct uniform examination procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct surveillance personnel in conducting an examination, or its successor document.~~

~~(14) "On-site examination" means an examination conducted at the insurer's home, the insurer's office, or the location where the records under review are stored.~~

~~(15) (8) "Person" means any individual, aggregation of individuals, trust, association, partnership, or corporation, or any agent or affiliate thereof.~~

~~(16) "Qualified contract examiner" means a person who is under contract with the commissioner and who is qualified by education, experience, and, where applicable, professional designations to perform market conduct actions.~~

~~(17) "Standard data request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in an examination.~~

~~(18) "Targeted examination" means an examination, including, but not limited to, limited review and analysis conducted through a desk examination or on-site examination and in accordance with market conduct uniform examination procedures. The targeted examination shall be of a specific insurer's conduct, practices, or risks identified through market~~

~~analysis that have not been remedied by the insurer, including, but not limited to, underwriting and rating, marketing and sales, complaint-handling, operations and management, advertising materials, licensing, policyholder services, nonforfeitures, claims handling, or policy forms and filings. A targeted examination may be conducted as a desk examination or as an on-site examination.~~

~~(19) "Third-party model or product" means a model or product provided by an entity separate from and not under direct or indirect corporate control of the insurer using the model or product.~~

SECTION 3. In Colorado Revised Statutes, 10-1-203, **amend** (1) as follows:

10-1-203. Authority, scope, and scheduling of examinations.

(1) The commissioner or the commissioner's designee may conduct an examination ~~or investigation~~ of any company as often as the commissioner, in the commissioner's sole discretion, deems appropriate but shall, at a minimum, conduct a formal financial examination of every insurer licensed in this state not less frequently than once every five years; except that this does not include eligible nonadmitted insurers regulated in accordance with article 5 of this title TITLE 10. In scheduling financial ~~or market conduct~~ examinations and in determining their nature, scope, and frequency, the commissioner shall consider ~~such~~ matters SUCH as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, ~~complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses,~~ and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the national association of insurance commissioners.

SECTION 4. In Colorado Revised Statutes, 10-1-204, **amend** (1)(a), (2)(a), (4), (5), (6)(b), and (9)(a); and **repeal** (1)(b), (3), (9)(b), (9)(c), (10), and (11) as follows:

10-1-204. Conduct of examinations - conferences. (1) (a) In conducting the examination, the examiners shall observe those guidelines and procedures set forth in the ~~most recent available edition of the~~ examiners' handbook adopted by the national association of insurance commissioners and the Colorado insurance examiners handbook. The

commissioner may also employ ~~such~~ other guidelines or procedures as the commissioner ~~may deem~~ DEEMS appropriate.

~~(b) An examination under this article shall not be limited to an examination of the financial condition of a company but may, in the discretion of the commissioner, also include all other activities and affairs of the company.~~

(2) (a) Every company or person from whom information is sought and all officers, directors, and agents ~~thereof~~ OF THE COMPANY OR PERSON shall provide to the examiners timely, convenient, and free access at reasonable hours at its offices to all books, records, accounts, papers, tapes, computer records, and other documents relating to the property, assets, business, and affairs of the company being examined. ~~If the examination is an examination as defined in section 10-1-202 (3),~~ such THE company or person shall make ~~such~~ THE books, records, and documents available for examination or inspection at the office location of the division when the commissioner determines that it is reasonably cost-effective to do so. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination ~~so far as~~ TO THE EXTENT it is in their power to do so.

~~(3) The commissioner and all examiners shall have the power to issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction for an order, which shall be enforceable through contempt proceedings, compelling the person to appear and testify or produce documentary evidence. The commissioner may arrange for the services of an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the commissioner.~~

(4) Any person who knowingly or willfully testifies falsely in reference to any matter material to an ~~investigation~~, examination or inquiry is guilty of a misdemeanor and, upon conviction, ~~thereof~~, shall be punished by a fine of not more than five thousand dollars, ~~or~~ by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

(5) Any person who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or papers of a company or upon any statement filed or offered to be filed in the division or used in the course of any examination OR inquiry, ~~or investigation~~, with the intent to deceive the commissioner or any person appointed by the commissioner to CONDUCT OR make ~~such~~ THE examination OR inquiry, ~~or investigation~~, is guilty of a misdemeanor and, upon conviction, ~~thereof~~, shall be punished by a fine of not more than five thousand dollars, ~~or~~ by imprisonment in the county jail for not less than two months nor more than twelve months, or by both such fine and imprisonment.

(6) (b) (I) The commissioner may accept, as part of ~~any such~~ AN examination, reports made by any person qualified and competent to conduct the examination as set forth in this subsection (6); ~~No such~~ EXCEPT THAT NEITHER THE person, nor any member of ~~such~~ THE person's immediate family, ~~shall be officers~~ MAY BE:

(A) AN OFFICER of, connected with, or financially interested in the company, entity, or applicant being examined, other than as ~~policyholders~~, ~~nor shall they be~~ A POLICYHOLDER; OR

(B) Financially interested in any other corporation or person affected by the examination or by any related investigation or hearing.

(II) ~~Such persons~~ A PERSON THAT CONDUCTS AN EXAMINATION PURSUANT TO THIS SUBSECTION (6) shall keep strictly confidential all information, regardless of its source, obtained through any examination or about any examinee and shall disclose ~~such~~ THE information only to the commissioner or the examinee upon the specific request of either. The commissioner shall establish guidelines for assuring the neutrality of those persons to be authorized to supplement the examination procedures authorized in this section.

(III) The EXAMINEE SHALL PAY THE reasonable expenses and charges of ~~persons so~~ A PERSON retained or designated ~~shall be paid~~ PURSUANT TO THIS SUBSECTION (6) directly ~~by the examinee to such persons~~ THE PERSON. The examinee may contest the amount of fees, costs, and expenses charged ~~to it by such persons~~ BY THE PERSON by filing an objection with the commissioner, ~~which sets~~ SETTING forth the charges that the examinee considers to be unreasonable and the basis for the claim that

the charges are unreasonable. ~~No amounts that are so~~ A disputed will be AMOUNT IS NOT due to the examiner unless ~~and until~~ the commissioner has reviewed REVIEWS the objection and ~~made~~ MAKES a written finding that the disputed charges were reasonable in relation to the examination performed.

(9) (a) ~~The costs of financial~~ FOR examinations of foreign companies made outside the borders of this state and of executive or branch offices of domestic companies located outside the borders of this state, THE EXAMINED COMPANY shall ~~be paid by the company examined and shall include~~ PAY THE COSTS OF THE EXAMINATION, INCLUDING the expenses of the commissioner and the commissioner's assistants, who shall MUST be paid the same compensation as other examiners on such examinations.

(b) ~~The reasonable expenses of market conduct examinations shall be paid by the company examined, but shall not include the compensation of the commissioner and the commissioner's assistants.~~

(c) ~~(f) There is a presumption that a market conduct examination of a domestic company shall be conducted by the commissioner or the commissioner's assistants unless the commissioner determines that good cause exists to have the examination conducted by a contract examiner.~~

~~(H) The commissioner shall develop rules for determining when contract market conduct examiners can be used. Such rules shall include, but shall not be limited to, such factors as out-of-state travel requirements, workload needs, special expertise required for the examination, and market issues requiring an unanticipated examination.~~

(10) ~~The commissioner may also examine a company upon the request of five or more of the company's policyholders representing at least one hundred thousand dollars' worth of insurance in force, who shall make affidavit of their belief, with specifications of their reasons therefor in writing, that such company is in an unsound or insolvent condition; but only the United States branches of companies incorporated in foreign countries shall be examined by the commissioner.~~

(11) ~~For every market conduct examination conducted pursuant to this part 2, the division shall hold:~~

~~(a) A preexamination conference between the division and the~~

~~insurer subject to the examination. The division shall design and conduct the preexamination conference in accordance with the preexamination provisions of the NAIC market conduct examiner's handbook for the parties to discuss:~~

~~(I) Early resolution and simplification of issues and any disputes;~~

~~(H) Avoidance of the production of unnecessary or duplicative information; and~~

~~(HH) Facilitation of the complete, accurate, just, speedy, and inexpensive disposition of the examination.~~

~~(b) A pre-draft conference between the division, the examiner, and the insurer subject to the examination at least thirty days before the filing of a draft report. The division shall design and conduct the conference in accordance with the examination report provisions of the NAIC market conduct examiner's handbook to facilitate:~~

~~(I) The resolution of outstanding issues;~~

~~(H) Discussing and resolving corrective actions; and~~

~~(HH) Reviewing the report before it is printed in draft form.~~

SECTION 5. In Colorado Revised Statutes, 10-1-205, **amend** (1), (4)(a), (4)(e), and (8) as follows:

10-1-205. Financial examination reports. (1) ~~The provisions of this section shall apply to financial examinations and market conduct examinations but shall not apply to informal investigations of consumer complaints except as otherwise provided in paragraph (b) of subsection (8) of this section.~~ Examination reports ~~shall~~ **MUST** comprise only facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and ~~such~~ **THE** conclusions and recommendations as the examiners find reasonably warranted based upon the facts.

~~(4) (a) All orders entered pursuant to paragraph (a) of subsection (3)~~

SUBSECTION (3)(a) of this section shall MUST be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. ~~Any such~~ THE order shall be considered IS a final agency decision and shall MUST be served upon the company by certified mail together with a copy of the adopted examination report. ~~Review of such decision may be sought in the district court in and for the city and county of Denver and shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.~~ NOTWITHSTANDING THE REQUIREMENTS OF SECTION 10-1-127, THE FINAL AGENCY DECISION IS SUBJECT TO JUDICIAL REVIEW BY THE DISTRICT COURT PURSUANT TO SECTION 24-4-106. Within ~~sixty~~ THIRTY days ~~of the~~ AFTER issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that ~~they~~ THE DIRECTORS have received a copy of the adopted report and related orders.

(e) Any order issued by the commissioner pursuant to ~~paragraph (d) of subsection (3)~~ SUBSECTION (3)(d) of this section may be appealed directly to the DISTRICT court. ~~of appeals.~~

(8) **Confidentiality of ancillary information.** (a) All working papers, recorded information, documents, and copies thereof that are produced or obtained by or disclosed to the commissioner or any other person in the course of a ~~financial or market conduct~~ AN examination made under this part 2 ~~shall be given~~ OR IN THE COURSE OF ANALYSIS OF THE FINANCIAL CONDITION OF THE COMPANY BY THE COMMISSIONER ARE confidential, ~~treatment~~, are not subject to subpoena, and may not be made public by the commissioner or any other person except to the extent provided in subsection (5) of this section; except that THE COMMISSIONER MAY GRANT THE NAIC access to ~~such~~ THE materials. ~~may be granted to the national association of insurance commissioners.~~ Disclosure of the said materials shall MAY be made only upon the prior written agreement of the recipient to hold ~~such~~ THE information confidential as required by this section or upon the prior written consent of the company to which it pertains.

(b) ~~When an informal investigation of a consumer complaint is conducted by the commissioner, all working papers, claim files, recorded information, and documents, and all copies thereof, that are produced or obtained by or disclosed to the commissioner or any other person in the~~

~~course of an informal investigation shall be given confidential treatment until the informal investigation is concluded by the commissioner. After an informal investigation is concluded, the records shall no longer be considered confidential except as otherwise provided in article 72 of title 24, C.R.S., relating to public records~~ NEITHER THE COMMISSIONER NOR ANY PERSON WHO RECEIVED THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE COMMISSIONER, INCLUDING THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES, MAY TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SUBSECTION (8)(a) OF THIS SECTION.

SECTION 6. In Colorado Revised Statutes, 10-1-207, **amend** (5) as follows:

10-1-207. Immunity from liability - prohibited activity. (5) An insurer shall not take any retaliatory personnel action against an employee because the employee provides information to or testifies before the commissioner conducting ~~a market conduct investigation~~ AN EXAMINATION into the practices of the ~~insurer~~ COMPANY.

SECTION 7. In Colorado Revised Statutes, **repeal** 10-1-208, 10-1-209, 10-1-210, 10-1-211, 10-1-212, 10-1-213, 10-1-214, 10-1-215, and 10-1-216.

SECTION 8. In Colorado Revised Statutes, **amend** 10-1-217 as follows:

10-1-217. Coordination with other states through NAIC. The commissioner shall share information and coordinate the division's ~~market analysis and~~ examination efforts with other states through the NAIC.

SECTION 9. In Colorado Revised Statutes, 10-1-218, **repeal** (1) as follows:

10-1-218. Additional duties of commissioner. (1) ~~At least once a year and more frequently if deemed necessary, the commissioner shall make available to insurers and other entities subject to this title information on new laws and rules, enforcement actions, and other information the commissioner deems pertinent to ensure compliance with market conduct~~

~~requirements. The commissioner shall determine an appropriate manner in which to provide the information to insurers. The failure of the commissioner to provide any such information shall not be a defense for any insurer that fails to comply with an insurance law or rule of this state.~~

SECTION 10. In Colorado Revised Statutes, **add** part 3 to article 1 of title 10 as follows:

PART 3
MARKET CONDUCT

10-1-301. Legislative declaration. THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT IT IS NECESSARY TO ESTABLISH AN EFFECTIVE AND EFFICIENT SYSTEM FOR REVIEWING, EVALUATING, AND ANALYZING THE ACTIVITIES, OPERATIONS, AND AFFAIRS OF ALL PERSONS TRANSACTING THE BUSINESS OF INSURANCE IN THIS STATE AND ALL PERSONS OTHERWISE SUBJECT TO THE JURISDICTION OF THE COMMISSIONER. THIS PART 3 IS INTENDED TO ENABLE THE COMMISSIONER TO ADOPT A FLEXIBLE SYSTEM OF REVIEW, EVALUATION, AND ANALYSIS THAT DIRECTS RESOURCES AS MAY BE DEEMED APPROPRIATE AND NECESSARY FOR THE ADMINISTRATION OF THE INSURANCE AND INSURANCE-RELATED LAWS OF THIS STATE.

10-1-302. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE, THE COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE.

(2) "COMPANY" MEANS ANY PERSON OR GROUP OF PERSONS ENGAGING IN OR PROPOSING OR ATTEMPTING TO ENGAGE IN ANY TRANSACTION OR KIND OF INSURANCE OR SURETY BUSINESS OR ANY PERSON OR GROUP OF PERSONS WHO MAY OTHERWISE BE SUBJECT TO ANY ADMINISTRATIVE, REGULATORY, OR TAXING AUTHORITY OF THE COMMISSIONER, AS WELL AS ANY ADVISORY ORGANIZATION OR RATING ORGANIZATION AS DEFINED IN SECTION 10-4-402.

(3) "COMPLAINT" MEANS ANY WRITTEN COMMUNICATION, OR ORAL COMMUNICATION THAT IS SUBSEQUENTLY CONVERTED TO A WRITTEN FORM, THAT EXPRESSES A GRIEVANCE OR DISSATISFACTION WITH A SPECIFIC

PERSON OR ENTITY SUBJECT TO REGULATION BY THE DIVISION.

(4) "DIVISION" MEANS THE DIVISION OF INSURANCE, THE COMMISSIONER OF INSURANCE, OR A GOVERNMENT OFFICIAL OR AGENCY OF A STATE OTHER THAN COLORADO EXERCISING POWERS AND DUTIES SUBSTANTIALLY EQUIVALENT TO THOSE OF THE COMMISSIONER OR THE DIVISION.

(5) "MARKET ANALYSIS" MEANS A PROCESS WHEREBY MARKET CONDUCT SURVEILLANCE PERSONNEL COLLECT AND ANALYZE INFORMATION FROM FILED SCHEDULES, SURVEYS, REQUIRED REPORTS, AND OTHER SOURCES IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF THE MARKETPLACE AND TO IDENTIFY PATTERNS OR PRACTICES OF COMPANIES THAT DEVIATE FROM THE NORM OR THAT MAY POSE RISK TO THE INSURANCE CONSUMER.

(6) "MARKET CONDUCT EXAMINATION" INCLUDES ANY TYPE OF EXAMINATION AS SET FORTH IN THE MARKET REGULATION HANDBOOK THAT ASSESSES A COMPANY'S COMPLIANCE WITH THE LAWS, RULES, AND REGULATIONS APPLICABLE TO THE COMPANY. MARKET CONDUCT EXAMINATIONS INCLUDE DESK EXAMINATIONS, ON-SITE EXAMINATIONS, FOLLOW UP EXAMINATIONS, AND TARGETED EXAMINATIONS.

(7) "MARKET CONDUCT SURVEILLANCE" MEANS ANY OF THE FULL RANGE OF ACTIVITIES THAT THE COMMISSIONER MAY INITIATE TO ASSESS AND ADDRESS THE MARKET PRACTICES OF ANY COMPANY LICENSED OR REGISTERED PURSUANT TO THIS TITLE 10 TO CONDUCT BUSINESS IN THIS STATE, INCLUDING MARKET ANALYSIS, INTERROGATORIES, AND MARKET CONDUCT EXAMINATIONS.

(8) "MARKET CONDUCT SURVEILLANCE PERSONNEL" MEANS THOSE INDIVIDUALS EMPLOYED BY OR UNDER CONTRACT WITH THE COMMISSIONER TO COLLECT, ANALYZE, REVIEW, OR ACT ON INFORMATION ABOUT THE INSURANCE MARKETPLACE THAT IDENTIFIES PATTERNS OR PRACTICES OF COMPANIES.

(9) "MARKET REGULATION HANDBOOK" MEANS THE GUIDELINES DEVELOPED AND ISSUED BY THE NAIC THAT ARE DESIGNED TO BE USED TO CONDUCT UNIFORM, STANDARDIZED MARKET CONDUCT SURVEILLANCE.

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

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

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

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

10-1-303. Market analysis - market conduct surveillance.

(1) THE COMMISSIONER MAY PERFORM MARKET ANALYSIS BY GATHERING AND ANALYZING INFORMATION FROM DATA CURRENTLY AVAILABLE TO THE COMMISSIONER, INFORMATION FROM SURVEYS, DATA CALLS, OR REPORTS THAT ARE SUBMITTED REGULARLY TO THE COMMISSIONER, INFORMATION COLLECTED BY THE NAIC, AND INFORMATION FROM A VARIETY OF OTHER SOURCES IN BOTH THE PUBLIC AND PRIVATE SECTORS IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF THE MARKETPLACE AND TO IDENTIFY FOR FURTHER REVIEW COMPANIES OR PRACTICES THAT DEVIATE FROM THE NORM OR THAT MAY POSE A POTENTIAL RISK TO THE INSURANCE CONSUMER. THE COMMISSIONER SHALL USE THE MARKET REGULATION HANDBOOK AS A GUIDE IN PERFORMING THE MARKET ANALYSIS.

(2) (a) IF THE COMMISSIONER DETERMINES THAT FURTHER INQUIRY INTO A PARTICULAR COMPANY OR PRACTICE IS NEEDED, THE COMMISSIONER MAY CONSIDER THE CONTINUUM OF OTHER TYPES OF MARKET CONDUCT SURVEILLANCE AS SPECIFIED IN THIS SUBSECTION (2)(a). THE COMMISSIONER SHALL INFORM THE COMPANY IN WRITING OF THE TYPE OF MARKET CONDUCT SURVEILLANCE SELECTED IF IT INVOLVES COMPANY PARTICIPATION OR RESPONSE. THE TYPES OF MARKET CONDUCT SURVEILLANCE INCLUDE:

- (I) CORRESPONDENCE WITH THE COMPANY;
- (II) COMPANY INTERVIEWS;
- (III) INFORMATION GATHERING;
- (IV) POLICY AND PROCEDURE REVIEWS;
- (V) INTERROGATORIES;
- (VI) REVIEW OF COMPANY SELF-EVALUATIONS AND VOLUNTARY COMPLIANCE PROGRAMS;
- (VII) SELF-AUDITS; AND
- (VIII) MARKET CONDUCT EXAMINATIONS.

(b) (I) THE COMMISSIONER SHALL TAKE STEPS REASONABLY NECESSARY TO ELIMINATE REQUESTS FOR INFORMATION THAT DUPLICATE INFORMATION PROVIDED AS PART OF A COMPANY'S FINANCIAL STATEMENT, THE NAIC'S MARKET CONDUCT ANNUAL STATEMENT, OR OTHER REQUIRED SURVEYS, DATA CALLS, OR REPORTS THAT ARE SUBMITTED REGULARLY TO THE COMMISSIONER.

(II) THE COMMISSIONER MAY COORDINATE THE MARKET CONDUCT SURVEILLANCE AND FINDINGS OF THIS STATE WITH MARKET CONDUCT SURVEILLANCE AND FINDINGS OF OTHER STATES.

(3) NOTHING IN THIS SECTION REQUIRES THE COMMISSIONER TO CONDUCT MARKET ANALYSIS PRIOR TO INITIATING ANY OTHER TYPE OF MARKET CONDUCT SURVEILLANCE.

10-1-304. Authority and scope of market conduct surveillance - rules. (1) THE COMMISSIONER MAY CONDUCT MARKET CONDUCT SURVEILLANCE OF ANY COMPANY AS OFTEN AS THE COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION, DEEMS APPROPRIATE. WHEN INITIATING MARKET CONDUCT SURVEILLANCE AND IN DETERMINING ITS NATURE, SCOPE, AND FREQUENCY, THE COMMISSIONER MAY CONSIDER ANY MARKET ANALYSIS PERFORMED PURSUANT TO SECTION 10-1-303 AND ANY OTHER CRITERIA AS SET FORTH IN THE MOST RECENT AVAILABLE EDITION OF THE

MARKET REGULATION HANDBOOK.

(2) FOR PURPOSES OF COMPLETING MARKET CONDUCT SURVEILLANCE OF ANY COMPANY UNDER THIS PART 3, THE COMMISSIONER MAY REVIEW, EVALUATE, OR ANALYZE ANY PERSON OR THE BUSINESS OF ANY PERSON TO THE EXTENT THE ACTION IS, IN THE SOLE DISCRETION OF THE COMMISSIONER, NECESSARY OR MATERIAL TO THE MARKET CONDUCT SURVEILLANCE.

(3) IN CONDUCTING MARKET CONDUCT SURVEILLANCE, MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL CONSIDER THOSE GUIDELINES AND PROCEDURES SET FORTH IN THE MOST RECENT AVAILABLE EDITION OF THE MARKET REGULATION HANDBOOK. THE COMMISSIONER MAY ALSO EMPLOY OTHER STANDARD INSURANCE INDUSTRY GUIDELINES OR PROCEDURES THE COMMISSIONER DEEMS APPROPRIATE.

(4) ANY PERSON WHO KNOWINGLY OR WILLFULLY TESTIFIES FALSELY IN REFERENCE TO ANY MATTER MATERIAL TO ANY MARKET CONDUCT SURVEILLANCE, OR WHO KNOWINGLY OR WILLFULLY MAKES ANY FALSE CERTIFICATE, ENTRY, OR MEMORANDUM UPON ANY OF THE BOOKS OR PAPERS OF A COMPANY OR UPON ANY STATEMENT FILED OR OFFERED TO BE FILED WITH THE COMMISSIONER OR USED IN THE COURSE OF ANY MARKET CONDUCT SURVEILLANCE OR INQUIRY IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS, OR BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN THREE MONTHS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

(5) (a) EVERY COMPANY OR PERSON FROM WHOM INFORMATION IS SOUGHT AND ALL OFFICERS, DIRECTORS, AND AGENTS OF THE COMPANY OR PERSON SHALL PROVIDE TO THE MARKET CONDUCT SURVEILLANCE PERSONNEL TIMELY, CONVENIENT, AND FREE ACCESS TO ALL BOOKS, RECORDS, ACCOUNTS, PAPERS, TAPES, COMPUTER RECORDS, AND OTHER DOCUMENTS RELATING TO THE PROPERTY, ASSETS, BUSINESS, AND AFFAIRS OF THE COMPANY. THE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS OF THE COMPANY OR PERSON SHALL FACILITATE THE MARKET CONDUCT SURVEILLANCE AND AID IN THE REVIEW, EVALUATION, OR ANALYSIS TO THE EXTENT IT IS IN THEIR POWER TO DO SO.

(b) (I) THE REFUSAL OF ANY COMPANY OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS TO SUBMIT TO ANY TYPE OF MARKET

CONDUCT SURVEILLANCE OR TO COMPLY WITH ANY REASONABLE WRITTEN REQUEST OF MARKET CONDUCT SURVEILLANCE PERSONNEL IS GROUNDS FOR SUSPENSION, REVOCATION, DENIAL, OR NONRENEWAL OF ANY LICENSE OR AUTHORITY HELD BY THE COMPANY AND SUBJECT TO THE COMMISSIONER'S JURISDICTION.

(II) PROCEEDINGS FOR ANY SUSPENSION OR REVOCATION PURSUANT TO THIS SUBSECTION (5)(b) MUST BE CONDUCTED IN ACCORDANCE WITH SECTION 10-1-110.

(6)(a) THE COMPANY SUBJECT TO MARKET CONDUCT SURVEILLANCE SHALL PAY THE REASONABLE FEES AND EXPENSES OF THE MARKET CONDUCT SURVEILLANCE.

(b) (I) THE COMMISSIONER OR THE COMMISSIONER'S ASSISTANTS SHALL CONDUCT MARKET CONDUCT SURVEILLANCE OF A DOMESTIC COMPANY UNLESS THE COMMISSIONER DETERMINES THAT GOOD CAUSE EXISTS TO HAVE THE MARKET CONDUCT SURVEILLANCE CONDUCTED BY CONTRACT MARKET CONDUCT SURVEILLANCE PERSONNEL.

(II) THE COMMISSIONER SHALL ADOPT RULES FOR DETERMINING WHEN CONTRACT MARKET CONDUCT SURVEILLANCE PERSONNEL MAY BE USED AND THE REASONABLE FEES AND EXPENSES THAT THE COMPANY SUBJECT TO THE MARKET CONDUCT SURVEILLANCE SHALL PAY. THE RULES MUST INCLUDE FACTORS SUCH AS TRAVEL REQUIREMENTS, WORKLOAD NEEDS, SPECIAL EXPERTISE REQUIRED FOR THE MARKET CONDUCT SURVEILLANCE, AND MARKET ISSUES REQUIRING ANY UNANTICIPATED MARKET CONDUCT SURVEILLANCE.

(c) WHEN AN INSURANCE COMPANY NOT AUTHORIZED TO DO BUSINESS IN THIS STATE, A COMPANY ADJUDGED INSOLVENT, OR A COMPANY WITHDRAWING FROM THIS STATE FOR ANY CAUSE NEGLECTS, FAILS, OR REFUSES TO PAY THE REASONABLE FEES AND EXPENSES FOR MARKET CONDUCT SURVEILLANCE AS APPROVED BY THE COMMISSIONER:

(I) THE STATE TREASURER SHALL PAY THE FEES AND EXPENSES FROM THE GENERAL FUND UPON THE ORDER OF THE COMMISSIONER; AND

(II) THE AMOUNT PAID IS A FIRST LIEN UPON ALL ASSETS AND PROPERTY OF THE COMPANY AND MAY BE RECOVERED BY SUIT FILED BY THE

ATTORNEY GENERAL ON BEHALF OF THE STATE OF COLORADO AND CREDITED TO THE GENERAL FUND.

(7) NOTHING IN THIS PART 3 LIMITS THE COMMISSIONER'S AUTHORITY TO TERMINATE OR SUSPEND ANY MARKET CONDUCT SURVEILLANCE IN ORDER TO PURSUE OTHER LEGAL OR REGULATORY ACTION PURSUANT TO THE INSURANCE LAWS OF THIS STATE.

(8) (a) WHERE THE REASONABLE AND NECESSARY COST OF ANY TYPE OF MARKET CONDUCT SURVEILLANCE IS TO BE ASSESSED AGAINST THE COMPANY SUBJECT TO THE MARKET CONDUCT SURVEILLANCE, THE FEE MUST BE CONSISTENT WITH THE MARKET REGULATION HANDBOOK. THE FEES AND EXPENSES MUST BE ITEMIZED AND MUST INCLUDE RECEIPTS FOR ALL APPLICABLE EXPENSES, AND INVOICES SHALL BE PROVIDED TO THE DIVISION ON AT LEAST A MONTHLY BASIS FOR REVIEW PRIOR TO SUBMISSION TO THE COMPANY FOR PAYMENT. THE COMPANY SUBJECT TO THE MARKET CONDUCT SURVEILLANCE SHALL PAY FEES AND EXPENSES AT LEAST MONTHLY.

(b) THE COMMISSIONER SHALL MAINTAIN ACTIVE MANAGEMENT AND OVERSIGHT OF COSTS, INCLUDING COSTS ASSOCIATED WITH THE COMMISSIONER'S OWN MARKET CONDUCT SURVEILLANCE PERSONNEL AND WITH RETAINING QUALIFIED CONTRACT MARKET CONDUCT SURVEILLANCE PERSONNEL. TO THE EXTENT THE COMMISSIONER RETAINS OUTSIDE ASSISTANCE, THE COMMISSIONER SHALL HAVE WRITTEN PROTOCOLS THAT:

(I) ESTABLISH AND UTILIZE A DISPUTE RESOLUTION OR ARBITRATION MECHANISM TO RESOLVE CONFLICTS WITH COMPANIES REGARDING FEES AND EXPENSES; AND

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

(c) A COMPANY CANNOT BE REQUIRED TO REIMBURSE ANY PORTION OF FEES UNDER THIS SUBSECTION (8) INCURRED BY MARKET CONDUCT SURVEILLANCE PERSONNEL THAT EXCEEDS THE FEES PRESCRIBED IN THE MARKET REGULATION HANDBOOK AND ANY SUCCESSOR DOCUMENTS TO THAT HANDBOOK, UNLESS THE COMMISSIONER DEMONSTRATES THAT THE FEES PRESCRIBED IN THE MARKET REGULATION HANDBOOK ARE

INADEQUATE UNDER THE CIRCUMSTANCES OF THE TYPE OF MARKET CONDUCT SURVEILLANCE CONDUCTED.

(d) A COMPANY MAY REQUEST AN INDEPENDENT AUDIT OF THE FEES AND EXPENSES CHARGED WITHIN TWELVE MONTHS AFTER THE COMPLETION OF ANY TYPE OF MARKET CONDUCT SURVEILLANCE. THE COMPANY IS RESPONSIBLE FOR THE COST OF THE INDEPENDENT AUDIT. MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL MAINTAIN DOCUMENTATION SUPPORTING THE FEES AND EXPENSES CHARGED TO THE COMPANY FOR AT LEAST TWELVE MONTHS AFTER THE COMPLETION OF THE MARKET CONDUCT SURVEILLANCE.

10-1-305. Market conduct examinations. (1) THE COMMISSIONER MAY CONDUCT A MARKET CONDUCT EXAMINATION OF ANY COMPANY AS OFTEN AS THE COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION, DEEMS APPROPRIATE; EXCEPT THAT THE COMMISSIONER SHALL RELY UPON THE STATE OF DOMICILE TO CONDUCT MARKET CONDUCT EXAMINATIONS OF THOSE ELIGIBLE NONADMITTED INSURERS REGULATED IN ACCORDANCE WITH ARTICLE 5 OF THIS TITLE 10.

(2) TO THE EXTENT PRACTICABLE, THE COMMISSIONER SHALL COORDINATE A MARKET CONDUCT EXAMINATION OF A FOREIGN COMPANY AUTHORIZED UNDER THIS TITLE 10 TO DO BUSINESS IN THIS STATE WITH THE INSURANCE COMMISSIONER OF THE COMPANY'S STATE OF DOMICILE.

(3) (a) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES INDICATING A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT LEAST SIXTY DAYS BEFORE STARTING A MARKET CONDUCT EXAMINATION, THE DIVISION SHALL NOTIFY THE COMPANY THAT A MARKET CONDUCT EXAMINATION WILL BE PERFORMED.

(b) THE DIVISION SHALL USE THE STANDARD DATA REQUEST OR A SUCCESSOR OR MODIFIED PRODUCT THAT IS SUBSTANTIALLY SIMILAR TO THE STANDARD DATA REQUEST.

(c) AT THE SAME TIME THE NOTICE IS SENT TO THE COMPANY, THE DIVISION SHALL PROVIDE NOTICE ON THE NAIC'S EXAMINATION TRACKING SYSTEM OR SUCCESSOR NAIC PRODUCT THAT A MARKET CONDUCT EXAMINATION HAS BEEN SCHEDULED.

(4) (a) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES INDICATING A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT LEAST THIRTY DAYS BEFORE STARTING THE MARKET CONDUCT EXAMINATION, THE DIVISION SHALL OFFER, IN WRITING, TO CONDUCT A PREEXAMINATION CONFERENCE WITH THE COMPANY'S EXAMINATION COORDINATOR AND KEY PERSONNEL TO DISCUSS:

(I) EARLY RESOLUTION AND SIMPLIFICATION OF PROCEDURES;

(II) AVOIDANCE OF THE PRODUCTION OF UNNECESSARY OR DUPLICATIVE INFORMATION; AND

(III) FACILITATION OF COMPLETE, ACCURATE, JUST, SPEEDY, AND INEXPENSIVE DISPOSITION OF THE EXAMINATION.

(b) EXCEPT WHEN EXTRAORDINARY CIRCUMSTANCES INDICATING A RISK TO CONSUMERS REQUIRES IMMEDIATE ACTION, AT LEAST THIRTY DAYS BEFORE STARTING THE MARKET CONDUCT EXAMINATION, THE DIVISION SHALL PREPARE AND PROVIDE TO THE COMPANY SUBJECT TO THE EXAMINATION A WORK PLAN CONSISTING OF THE FOLLOWING:

(I) THE NAME AND ADDRESS OF THE COMPANY BEING EXAMINED;

(II) THE NAME AND CONTACT INFORMATION OF THE MARKET CONDUCT SURVEILLANCE PERSONNEL WHO WILL BE CONDUCTING THE EXAMINATION;

(III) THE TYPE OF MARKET CONDUCT EXAMINATION BEING CONDUCTED;

(IV) THE SCOPE OF THE EXAMINATION;

(V) THE DATE THE EXAMINATION IS SCHEDULED TO BEGIN;

(VI) A TIME ESTIMATE FOR THE DURATION OF THE EXAMINATION;
AND

(VII) AN ESTIMATED COST FOR THE EXAMINATION.

(c) IF A MARKET CONDUCT EXAMINATION IS EXPANDED BEYOND THE

SCOPE PROVIDED TO THE COMPANY IN THE WORK PLAN, THE DIVISION SHALL:

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

(II) PROVIDE THE COMPANY WITH A REVISED WORK PLAN AS SOON AS PRACTICABLE.

(5) BEFORE CONCLUDING A MARKET CONDUCT EXAMINATION, THE DIVISION SHALL OFFER, IN WRITING, TO HOLD A PREDRAFT CONFERENCE WITH THE COMPANY SUBJECT TO THE EXAMINATION AT LEAST THIRTY DAYS BEFORE FILING A DRAFT REPORT. IF THE COMPANY CHOOSES TO HAVE A PREDRAFT CONFERENCE, THE DIVISION SHALL DESIGN AND CONDUCT THE PREDRAFT CONFERENCE IN ACCORDANCE WITH THE EXAMINATION REPORT PROVISIONS OF THE MARKET REGULATION HANDBOOK TO FACILITATE:

(a) RESOLUTION OF OUTSTANDING ISSUES;

(b) DISCUSSION OF POSSIBLE CORRECTIVE ACTIONS;

(c) REVIEW OF THE EXAMINATION REPORT BEFORE IT IS FILED IN DRAFT FORM; AND

(d) COMPLETE, ACCURATE, JUST, SPEEDY, AND INEXPENSIVE CONCLUSION OF THE EXAMINATION.

(6)(a) THE DIVISION SHALL ADHERE TO THE FOLLOWING PROCEDURE OR TIMELINE, UNLESS A MUTUAL AGREEMENT IS REACHED WITH THE COMPANY TO MODIFY THE PROCEDURE OR TIMELINE:

(I) THE DIVISION SHALL DELIVER THE DRAFT REPORT TO THE COMPANY WITHIN SIXTY DAYS AFTER COMPLETION OF THE MARKET CONDUCT EXAMINATION, WHICH IS THE DATE WHEN THE DIVISION CONFIRMS IN WRITING THAT THE EXAMINATION IS COMPLETED.

(II) THE COMPANY MAY RESPOND WITH WRITTEN SUBMISSIONS OR REBUTTALS CHALLENGING ANY ISSUE CONTAINED IN THE DRAFT REPORT WITHIN THIRTY DAYS AFTER THE DATE OF THE DRAFT REPORT. ANY ISSUE IN THE DRAFT REPORT THAT IS NOT CHALLENGED BY THE COMPANY IS DEEMED

ACCEPTED BY THE COMPANY. THE COMPANY'S WRITTEN SUBMISSIONS AND REBUTTALS MUST BE INCLUDED IN THE MARKET CONDUCT SURVEILLANCE PERSONNEL'S WORK PAPERS.

(III) UNLESS A MUTUAL AGREEMENT IS REACHED TO EXTEND THE DEADLINE, WITHIN THIRTY DAYS AFTER THE PERIOD ALLOWED FOR THE COMPANY'S WRITTEN SUBMISSIONS OR REBUTTALS ENDS, THE DIVISION SHALL PROVIDE TO THE COMPANY A FINAL REPORT. THE DIVISION SHALL NOT INCLUDE ANY ISSUES IN THE FINAL REPORT THAT WERE NOT INCLUDED IN THE DRAFT REPORT WITHOUT PROVIDING THE COMPANY AN OPPORTUNITY TO SUPPLEMENT ITS SUBMISSIONS AND REBUTTALS IN ORDER TO RESPOND TO ANY NEW ISSUE. THE COMPANY MUST FILE ANY SUPPLEMENT TO ITS SUBMISSIONS AND REBUTTALS WITHIN FOURTEEN DAYS AFTER THE DIVISION ISSUES THE FINAL REPORT.

(IV) WITHIN THIRTY DAYS AFTER ISSUANCE OF THE FINAL REPORT, THE COMPANY MUST ACCEPT THE FINDINGS OF THE FINAL REPORT OR REQUEST A WRITTEN HEARING.

(b) IF THE COMPANY ACCEPTS THE FINDINGS OF THE FINAL REPORT, THE FOLLOWING PROCEDURES APPLY:

(I) THE COMMISSIONER SHALL ISSUE AN ORDER ADOPTING THE FINAL REPORT AS WRITTEN OR WITH SPECIFIED MODIFICATIONS OR CORRECTIONS WITHIN THIRTY DAYS AFTER THE COMPANY ACCEPTS THE REPORT.

(II) (A) THE COMMISSIONER SHALL INCLUDE WITH AN ORDER ISSUED PURSUANT TO SUBSECTION (6)(b)(I) OF THIS SECTION FINDINGS AND CONCLUSIONS RESULTING FROM THE COMMISSIONER'S CONSIDERATION AND REVIEW OF THE FINAL REPORT, RELEVANT MARKET CONDUCT SURVEILLANCE PERSONNEL WORK PAPERS, AND ANY WRITTEN SUBMISSIONS OR REBUTTALS.

(B) AN ORDER ISSUED PURSUANT TO SUBSECTION (6)(b)(I) OF THIS SECTION IS A FINAL AGENCY ACTION AND SHALL BE SERVED UPON THE COMPANY BY CERTIFIED MAIL TOGETHER WITH A COPY OF THE ADOPTED FINAL REPORT. WITHIN SIXTY DAYS AFTER ISSUANCE OF THE ADOPTED FINAL REPORT, THE COMPANY SHALL FILE AFFIDAVITS EXECUTED BY EACH OF ITS DIRECTORS STATING UNDER OATH THAT THE DIRECTORS HAVE RECEIVED A COPY OF THE FINAL REPORT AND RELATED ORDERS.

(III) NOTWITHSTANDING THE REQUIREMENTS OF SECTION 10-1-127, IF THE FINAL AGENCY ORDER MODIFIES OR CORRECTS THE FINAL REPORT ACCEPTED BY THE COMPANY, THE COMPANY MAY APPEAL THE MODIFIED OR CORRECTED PORTIONS OF THE FINAL AGENCY ORDER, INCLUDING THE PENALTY OR ALL OR PART OF ANY FINE OR CIVIL PENALTY IMPOSED IN THE ORDER, TO THE DISTRICT COURT PURSUANT TO SECTION 24-4-106. IN THE ABSENCE OF ANY MODIFICATION OR CORRECTIONS TO THE FINAL REPORT ACCEPTED BY THE COMPANY, THE COMPANY DOES NOT HAVE A RIGHT TO JUDICIAL REVIEW OF THE FINAL AGENCY ACTION ADOPTED BY THE COMMISSIONER EXCEPT FOR THE RIGHT TO APPEAL THE PENALTY OR ALL OR PART OF ANY FINE OR CIVIL PENALTY IMPOSED IN THE ORDER TO THE DISTRICT COURT PURSUANT TO SECTION 24-4-106.

(c) IF THE COMPANY REQUESTS A WRITTEN HEARING, THE FOLLOWING PROCEDURES APPLY:

(I) THE COMPANY MUST REQUEST THE WRITTEN HEARING IN WRITING AND MUST SPECIFY THE ISSUES IN THE FINAL REPORT THAT THE COMPANY IS CHALLENGING. THE COMPANY IS LIMITED TO CHALLENGING THE ISSUES THAT WERE PREVIOUSLY CHALLENGED IN THE COMPANY'S WRITTEN SUBMISSION AND REBUTTAL OR SUPPLEMENTAL SUBMISSION AND REBUTTAL AS PROVIDED PURSUANT TO SUBSECTIONS (6)(a)(II) AND (6)(a)(III) OF THIS SECTION.

(II) THE HEARING SHALL BE CONDUCTED BY WRITTEN ARGUMENTS SUBMITTED TO THE COMMISSIONER.

(III) DISCOVERY IS LIMITED TO THE MARKET CONDUCT SURVEILLANCE PERSONNEL'S WORK PAPERS THAT ARE RELEVANT TO THE ISSUES THE COMPANY IS CHALLENGING. THE RELEVANT MARKET CONDUCT SURVEILLANCE PERSONNEL'S WORK PAPERS ARE DEEMED ADMITTED AND INCLUDED IN THE RECORD. NO OTHER FORMS OF DISCOVERY, INCLUDING DEPOSITIONS AND INTERROGATORIES, ARE ALLOWED, EXCEPT UPON THE WRITTEN AGREEMENT OF THE COMPANY AND THE DIVISION.

(IV) ONLY THE COMPANY AND THE DIVISION MAY SUBMIT WRITTEN ARGUMENTS.

(V) THE COMPANY MUST SUBMIT ITS WRITTEN ARGUMENT WITHIN THIRTY DAYS AFTER IT REQUESTS THE HEARING.

(VI) THE DIVISION SHALL SUBMIT ITS WRITTEN RESPONSE WITHIN THIRTY DAYS AFTER THE END OF THE PERIOD ALLOWED FOR THE COMPANY TO SUBMIT ITS WRITTEN ARGUMENT.

(VII) THE COMMISSIONER SHALL ISSUE A DECISION ACCOMPANIED BY FINDINGS AND CONCLUSIONS RESULTING FROM THE COMMISSIONER'S CONSIDERATION AND REVIEW OF THE WRITTEN ARGUMENTS, THE FINAL REPORT, RELEVANT MARKET CONDUCT SURVEILLANCE PERSONNEL WORK PAPERS, AND ANY WRITTEN SUBMISSIONS OR REBUTTALS. THE COMMISSIONER'S ORDER IS A FINAL AGENCY ACTION AND SHALL BE SERVED UPON THE COMPANY BY CERTIFIED MAIL TOGETHER WITH A COPY OF THE FINAL REPORT. UNLESS THE EFFECTIVE DATE OF THE FINAL AGENCY ORDER IS POSTPONED PURSUANT TO SECTION 24-4-106 (5), WITHIN SIXTY DAYS AFTER ISSUANCE OF THE FINAL AGENCY ORDER, THE COMPANY SHALL FILE AFFIDAVITS EXECUTED BY EACH OF ITS DIRECTORS STATING UNDER OATH THAT THE DIRECTORS HAVE RECEIVED A COPY OF THE FINAL REPORT AND RELATED ORDERS.

(VIII) ANY PORTION OF THE FINAL REPORT THAT IS NOT OR CANNOT BE CHALLENGED BY THE COMPANY IS INCORPORATED INTO THE DECISION OF THE COMMISSIONER.

(IX) NOTWITHSTANDING THE REQUIREMENTS OF SECTION 10-1-127, THE COMMISSIONER'S DECISION IS A FINAL AGENCY ACTION APPEALABLE TO THE DISTRICT COURT PURSUANT TO SECTION 24-4-106.

(7) FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE COMMISSIONER'S FINAL AGENCY ACTION ARE PRIMA FACIE EVIDENCE IN ANY LEGAL OR REGULATORY ACTION.

(8)(a) THE COMMISSIONER SHALL CONTINUE TO HOLD THE CONTENT OF ANY FINAL AGENCY ACTION OF A MARKET CONDUCT EXAMINATION AS PRIVATE AND CONFIDENTIAL FOR A PERIOD OF FORTY-NINE DAYS AFTER THE FINAL AGENCY ACTION. AFTER THE FORTY-NINE-DAY PERIOD EXPIRES, THE COMMISSIONER SHALL OPEN THE FINAL AGENCY ACTION FOR PUBLIC INSPECTION IF A COURT OF COMPETENT JURISDICTION HAS NOT STAYED ITS PUBLICATION.

(b) NOTHING IN THIS PART 3 PREVENTS THE COMMISSIONER FROM DISCLOSING THE CONTENT OF AN EXAMINATION REPORT, PRELIMINARY

EXAMINATION REPORT, OR RESULTS, OR ANY MATTER RELATING TO A REPORT OR RESULTS, TO THE DIVISION OR TO THE INSURANCE DIVISION OF ANY OTHER STATE OR AGENCY OR OFFICE OF THE FEDERAL GOVERNMENT AT ANY TIME IF THE DIVISION, AGENCY, OR OFFICE RECEIVING THE REPORT OR RELATED MATTERS AGREES AND HAS THE LEGAL AUTHORITY TO HOLD IT CONFIDENTIAL IN A MANNER CONSISTENT WITH THIS PART 3.

10-1-306. Market conduct surveillance personnel. (1) MARKET CONDUCT SURVEILLANCE PERSONNEL MUST BE QUALIFIED BY EDUCATION, EXPERIENCE, AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS. THE COMMISSIONER MAY SUPPLEMENT THE IN-HOUSE MARKET CONDUCT SURVEILLANCE STAFF WITH QUALIFIED OUTSIDE PROFESSIONAL ASSISTANCE IF THE COMMISSIONER DETERMINES THAT OUTSIDE ASSISTANCE IS NECESSARY.

(2) THE COMMISSIONER SHALL NOT APPOINT MARKET CONDUCT SURVEILLANCE PERSONNEL WHO, EITHER DIRECTLY OR INDIRECTLY, HAVE A CONFLICT OF INTEREST OR ARE AFFILIATED WITH THE MANAGEMENT OF OR OWN A PECUNIARY INTEREST IN ANY PERSON SUBJECT TO ANY TYPE OF MARKET CONDUCT SURVEILLANCE UNDER THIS PART 3; EXCEPT THAT THIS SECTION DOES NOT PRECLUDE MARKET CONDUCT SURVEILLANCE PERSONNEL FROM BEING:

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

(b) A GRANTOR OF A MORTGAGE OR SIMILAR INSTRUMENT ON THE MARKET CONDUCT SURVEILLANCE EMPLOYEE'S RESIDENCE TO A REGULATED ENTITY IF DONE UNDER CUSTOMARY TERMS AND IN THE ORDINARY COURSE OF BUSINESS;

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

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

(3) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE COMMISSIONER MAY RETAIN FROM TIME TO TIME, ON AN INDIVIDUAL BASIS, QUALIFIED ACTUARIES, CERTIFIED PUBLIC ACCOUNTANTS, OR SIMILAR INDIVIDUALS WHO ARE INDEPENDENTLY

PRACTICING THEIR PROFESSIONS EVEN THOUGH THOSE INDIVIDUALS MAY FROM TIME TO TIME BE SIMILARLY EMPLOYED OR RETAINED BY COMPANIES SUBJECT TO MARKET CONDUCT SURVEILLANCE UNDER THIS PART 3.

10-1-307. Immunity from liability - prohibited activity. (1) A CAUSE OF ACTION DOES NOT ARISE, AND LIABILITY SHALL NOT BE IMPOSED, AGAINST THE COMMISSIONER, THE COMMISSIONER'S AUTHORIZED REPRESENTATIVES, OR ANY MARKET CONDUCT SURVEILLANCE PERSONNEL EMPLOYED OR APPOINTED BY THE COMMISSIONER FOR ANY STATEMENTS MADE OR CONDUCT PERFORMED IN GOOD FAITH WHILE CARRYING OUT THE PROVISIONS OF THIS PART 3.

(2) A CAUSE OF ACTION DOES NOT ARISE, AND LIABILITY SHALL NOT BE IMPOSED, AGAINST ANY PERSON FOR COMMUNICATING OR DELIVERING INFORMATION OR DATA TO THE COMMISSIONER, THE COMMISSIONER'S AUTHORIZED REPRESENTATIVE, OR ANY MARKET CONDUCT SURVEILLANCE PERSONNEL PURSUANT TO A MARKET CONDUCT SURVEILLANCE PERFORMED UNDER THIS PART 3, IF THE COMMUNICATION OR DELIVERY WAS PERFORMED IN GOOD FAITH AND WITHOUT FRAUDULENT INTENT OR THE INTENT TO DECEIVE.

(3) THIS SECTION DOES NOT ABROGATE OR MODIFY ANY COMMON-LAW OR STATUTORY PRIVILEGE OR IMMUNITY ENJOYED BY ANY PERSON IDENTIFIED IN SUBSECTION (1) OF THIS SECTION.

(4) A PERSON IDENTIFIED IN SUBSECTION (1) OF THIS SECTION IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS IF THE PERSON IS THE PREVAILING PARTY IN A CIVIL ACTION FOR LIBEL, SLANDER, OR ANY OTHER RELEVANT TORT ARISING OUT OF ACTIVITIES IN CARRYING OUT THE PROVISIONS OF THIS PART 3, AND THE PARTY BRINGING THE ACTION WAS NOT SUBSTANTIALLY JUSTIFIED IN BRINGING THE ACTION. FOR PURPOSES OF THIS SECTION, A PROCEEDING IS "SUBSTANTIALLY JUSTIFIED" IF IT HAD A REASONABLE BASIS IN LAW OR FACT AT THE TIME THAT IT WAS INITIATED.

(5)(a) A COMPANY SHALL NOT TAKE ANY RETALIATORY PERSONNEL ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE PROVIDES INFORMATION PURSUANT TO ANY TYPE OF MARKET CONDUCT SURVEILLANCE EXAMINING THE PRACTICES OF THE COMPANY.

(b) AN EMPLOYEE WHO HAS BEEN THE SUBJECT OF A RETALIATORY

PERSONNEL ACTION IN VIOLATION OF SUBSECTION (5)(a) OF THIS SECTION MAY INSTITUTE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR RELIEF WITHIN ONE YEAR AFTER LEARNING OF THE ALLEGED RETALIATORY ACTION.

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

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

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

(III) COMPENSATION FOR LOST WAGES AND BENEFITS.

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

10-1-308. Rules. IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, THE COMMISSIONER MAY PROMULGATE REASONABLE RULES THAT ARE NECESSARY OR PROPER FOR IMPLEMENTING AND ADMINISTERING THIS PART 3, INCLUDING RULES NECESSARY TO ALIGN STATE LAW WITH THE REQUIREMENTS FOR ACCREDITATION SET FORTH BY THE NAIC.

10-1-309. Confidentiality requirements. (1) (a) MARKET CONDUCT SURVEILLANCE PERSONNEL HAVE FREE AND FULL ACCESS TO THE FOLLOWING DOCUMENTS OF AND PERSONS ASSOCIATED WITH THE COMPANY DURING REGULAR BUSINESS HOURS:

(I) BOOKS;

(II) RECORDS, INCLUDING ANY SELF-EVALUATION OR VOLUNTARY COMPLIANCE PROGRAM DOCUMENTS;

(III) EMPLOYEES;

(IV) OFFICERS; AND

(V) DIRECTORS.

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

(c) (I) THE COMMISSIONER AND ANY OTHER PERSON IN THE COURSE OF MARKET CONDUCT SURVEILLANCE SHALL KEEP CONFIDENTIAL ALL DOCUMENTS, INCLUDING WORKING PAPERS, THIRD-PARTY MODELS OR PRODUCTS, COMPLAINT LOGS, AND COPIES OF ANY DOCUMENTS CREATED, PRODUCED, OBTAINED BY, OR DISCLOSED TO THE COMMISSIONER, MARKET CONDUCT SURVEILLANCE PERSONNEL, OR ANY OTHER PERSON IN THE COURSE OF MARKET CONDUCT SURVEILLANCE CONDUCTED PURSUANT TO THIS PART 3, AND ALL DOCUMENTS OBTAINED BY THE NAIC AS A RESULT OF THIS PART 3. THE DOCUMENTS REMAIN CONFIDENTIAL BEYOND THE TERMINATION OF THE MARKET CONDUCT SURVEILLANCE, ARE NOT SUBJECT TO SUBPOENA, AND MUST NOT BE MADE PUBLIC AT ANY TIME OR USED BY THE COMMISSIONER OR ANY OTHER PERSON, EXCEPT AS PROVIDED IN SUBSECTIONS (2), (3), AND (5) OF THIS SECTION AND SECTION 10-1-312.

(II) THE COMMISSIONER, THE DIVISION, AND ANY OTHER PERSON IN THE COURSE OF MARKET CONDUCT SURVEILLANCE SHALL KEEP CONFIDENTIAL ANY SELF-EVALUATION OR VOLUNTARY COMPLIANCE PROGRAM DOCUMENTS DISCLOSED TO THE COMMISSIONER OR OTHER PERSON BY A COMPANY AND THE DATA COLLECTED VIA THE NAIC MARKET CONDUCT ANNUAL STATEMENT. THE DOCUMENTS ARE NOT SUBJECT TO SUBPOENA AND SHALL NOT BE MADE PUBLIC OR USED BY THE COMMISSIONER OR ANY OTHER PERSON, EXCEPT AS PROVIDED IN SUBSECTIONS (2), (3), AND (5) OF THIS SECTION AND SECTION 10-1-312.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, AND CONSISTENT WITH SUBSECTION (3) OF THIS SECTION, IN ORDER TO ASSIST IN THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE COMMISSIONER MAY:

(a) SHARE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR OTHER INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION SPECIFIED IN SUBSECTION (1) OF THIS SECTION, WITH OTHER STATE, FEDERAL, AND INTERNATIONAL

REGULATORY AGENCIES AND LAW ENFORCEMENT AUTHORITIES AND THE NAIC, ITS AFFILIATES, AND SUBSIDIARIES, IF THE RECIPIENT AGREES TO AND HAS THE LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL, COMMUNICATION, OR OTHER INFORMATION;

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

(c) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF INFORMATION CONSISTENT WITH THIS SECTION.

(3) NOTHING IN THIS PART 3 LIMITS:

(a) THE COMMISSIONER'S AUTHORITY TO USE, IF CONSISTENT WITH SECTION 10-3-414, ANY FINAL OR PRELIMINARY EXAMINATION REPORT, ANY MARKET CONDUCT SURVEILLANCE OR COMPANY WORK PAPERS OR OTHER DOCUMENTS, OR ANY OTHER INFORMATION DISCOVERED OR DEVELOPED DURING THE COURSE OF ANY MARKET CONDUCT SURVEILLANCE, IN THE FURTHERANCE OF ANY LEGAL OR REGULATORY ACTION INITIATED BY THE COMMISSIONER THAT THE COMMISSIONER MAY, IN THE COMMISSIONER'S SOLE DISCRETION, DEEM APPROPRIATE; OR

(b) THE ABILITY OF A COMPANY TO CONDUCT DISCOVERY IN ACCORDANCE WITH SECTION 10-1-305 (6)(c)(III).

(4) DISCLOSURE TO THE COMMISSIONER OF DOCUMENTS, MATERIALS, COMMUNICATIONS, OR INFORMATION REQUIRED AS PART OF ANY TYPE OF MARKET CONDUCT SURVEILLANCE DOES NOT WAIVE ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR INFORMATION.

(5) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENTS IN SUBSECTION (1)(c) OF THIS SECTION, WHEN THE COMMISSIONER PERFORMS ANY TYPE OF MARKET CONDUCT SURVEILLANCE THAT DOES NOT RISE TO THE LEVEL OF A MARKET CONDUCT EXAMINATION, THE COMMISSIONER MAY MAKE THE FINAL RESULTS OF THE MARKET CONDUCT SURVEILLANCE, IN AN AGGREGATED FORMAT, AVAILABLE FOR PUBLIC INSPECTION IN A MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

10-1-310. Fines and penalties. (1) AS A RESULT OF ANY MARKET CONDUCT SURVEILLANCE, THE COMMISSIONER MAY ORDER A MONETARY PENALTY OF UP TO THREE THOUSAND DOLLARS FOR EVERY ACT IN VIOLATION OF ANY LAW, RULE, OR PRIOR LAWFUL ORDER OF THE COMMISSIONER, NOT TO EXCEED AN AGGREGATE PENALTY OF THIRTY THOUSAND DOLLARS FOR EVERY ACT OR VIOLATION. IF THE COMPANY KNEW OR REASONABLY SHOULD HAVE KNOWN THAT ITS CONDUCT WAS IN VIOLATION OF ANY LAW, RULE, OR PRIOR LAWFUL ORDER OF THE COMMISSIONER, THE COMMISSIONER MAY ORDER A PENALTY OF UP TO THIRTY THOUSAND DOLLARS FOR EVERY ACT OR VIOLATION, NOT TO EXCEED AN AGGREGATE PENALTY OF TWO HUNDRED THOUSAND DOLLARS IN ANY ONE CALENDAR YEAR.

(2) THE COMMISSIONER SHALL ENSURE THAT FINES AND PENALTIES LEVIED AS A RESULT OF MARKET CONDUCT SURVEILLANCE OR OTHER ACTION ENFORCING THIS PART 3 ARE CONSISTENT, REASONABLE, AND JUSTIFIED.

(3) WHEN DETERMINING THE APPROPRIATE CIVIL PENALTY FOR A COMPANY AND WHETHER TO STAY ANY PORTION OF THE CIVIL PENALTY, THE COMMISSIONER SHALL CONSIDER:

(a) ACTIONS TAKEN BY THE COMPANY TO MAINTAIN MEMBERSHIP IN, AND COMPLY WITH THE STANDARDS OF, BEST-PRACTICE ORGANIZATIONS THAT PROMOTE HIGH ETHICAL STANDARDS OF CONDUCT IN THE MARKETPLACE;

(b) THE EXTENT TO WHICH THE COMPANY MAINTAINS REGULATORY COMPLIANCE PROGRAMS TO SELF-ASSESS, SELF-REPORT, AND REMEDIATE PROBLEMS DETECTED; AND

(c) REGULATORY COMPLIANCE PROGRAMS OR CORRECTIVE ACTIONS

THAT A COMPANY HAS INSTITUTED VOLUNTARILY PRIOR TO OR DURING THE PENDENCY OF ANY MARKET CONDUCT SURVEILLANCE IN ORDER TO REMEDY VIOLATIONS.

(4) IF THE COMMISSIONER STAYS ANY PORTION OF THE CIVIL PENALTY, THE COMMISSIONER MAY REINSTATE THE FULL CIVIL PENALTY, AND MAY IMPOSE ADDITIONAL PENALTIES, IF THE COMPANY FAILS TO REMEDY THE VIOLATIONS.

(5) THE COMMISSIONER SHALL INCLUDE IN THE FINAL AGENCY ORDER THE CIVIL PENALTY AMOUNT PER VIOLATION FOR EVERY ACT IN VIOLATION OF ANY LAW, RULE, OR PRIOR LAWFUL ORDER OF THE COMMISSIONER.

10-1-311. Participation in national market conduct databases.

(1) THE COMMISSIONER SHALL REPORT MARKET DATA TO THE NAIC'S MARKET INFORMATION SYSTEMS, INCLUDING THE COMPLAINT DATABASE SYSTEM, THE EXAMINATION TRACKING SYSTEM, AND THE REGULATORY INFORMATION RETRIEVAL SYSTEM, OR OTHER SUCCESSOR NAIC PRODUCTS AS DETERMINED BY THE COMMISSIONER.

(2) (a) THE COMMISSIONER SHALL REPORT COMPLAINTS TO THE NAIC COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT, IN ACCORDANCE WITH NAIC GUIDELINES. HOWEVER, BEFORE PUBLICATION OF COMPANY-SPECIFIC COMPLAINT INFORMATION BY THE COMMISSIONER, INSURANCE INDUSTRY PERSONNEL SHALL BE GIVEN THE OPPORTUNITY TO REVIEW COLORADO-SPECIFIC COMPLAINTS ASSIGNED TO THEIR COMPANY IN THE COMMISSIONER'S COMPLAINTS DATABASE AND REQUEST THAT CORRECTIONS BE MADE TO THE DATA. THE COMMISSIONER SHALL REVIEW COMPANY OBJECTIONS TO ASSIGNED COMPLAINTS BEFORE PUBLISHING COMPANY-SPECIFIC COMPLAINTS INFORMATION AND SHALL MAKE CORRECTIONS TO THE COMMISSIONER'S COMPLAINTS DATABASE WHEN APPROPRIATE. IF THE COMMISSIONER MAKES CORRECTIONS TO ITS COMPLAINTS DATABASE BASED ON ERRORS IDENTIFIED BY A COMPANY, THE COMMISSIONER SHALL SEND CORRECTED DATA TO THE NAIC COMPLAINT DATABASE SYSTEM, OR ITS SUCCESSOR PRODUCT.

(b) THE COMMISSIONER SHALL ENSURE THAT COMPANIES HAVE UNTIL AT LEAST FEBRUARY 15 TO REVIEW COMPLAINTS DATA FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR. IN ORDER FOR A COMPANY'S

OBJECTIONS TO ITS COMPLAINTS DATA INFORMATION TO BE CONSIDERED, THE COMPANY MUST REVIEW AND REQUEST ANY CORRECTIONS TO THE PRIOR CALENDAR YEAR'S COMPLAINTS DATA NO LATER THAN FEBRUARY 15.

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

10-1-312. Coordination with other states through NAIC.

(1) THE COMMISSIONER MAY SHARE INFORMATION AND COORDINATE THE COMMISSIONER'S MARKET SURVEILLANCE EFFORTS WITH OTHER STATES THROUGH THE NAIC.

(2) CONSISTENT WITH SECTION 10-1-309, IN ORDER TO ASSIST IN THE PERFORMANCE OF THE COMMISSIONER'S DUTIES, THE COMMISSIONER MAY:

(a) SHARE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR OTHER INFORMATION, INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SECTION 10-1-309 (1), WITH OTHER STATE, FEDERAL, AND INTERNATIONAL REGULATORY AGENCIES AND LAW ENFORCEMENT AUTHORITIES AND THE NAIC, ITS AFFILIATES, AND SUBSIDIARIES, IF THE RECIPIENT AGREES TO AND HAS THE LEGAL AUTHORITY TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL, COMMUNICATION, OR OTHER INFORMATION;

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

(c) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF INFORMATION CONSISTENT WITH THIS SECTION.

SECTION 11. In Colorado Revised Statutes, 10-2-707, **add** (3) as

follows:

10-2-707. Business practices - price limits - collateral.

(3) SUBJECT TO SECTION 16-4-110 (1)(c) AND (2), A BAIL PREMIUM IS EARNED IN ITS ENTIRETY BY A COMPENSATED SURETY UPON THE DEFENDANT'S RELEASE FROM CUSTODY.

SECTION 12. In Colorado Revised Statutes, 8-44-204, **amend** (4) as follows:

8-44-204. Public entities - self-insurance authorized for workers' compensation - pooled insurance. (4) Any self-insurance pool authorized by subsection (3) of this section shall not be construed to be an insurance company nor otherwise subject to ~~the provisions of~~ the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5). ~~and (10), C.R.S.~~

SECTION 13. In Colorado Revised Statutes, 8-44-205, **amend** (3) as follows:

8-44-205. Employers - self-insurance pools authorized for workers' compensation. (3) Any self-insurance pool authorized by subsection (2) of this section shall not be construed to be an insurance company nor otherwise subject to ~~the provisions of~~ the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5), ~~and (10), C.R.S.~~, and ~~shall be~~ IS subject to proceedings authorized by part 5 of article 3 of title 10. ~~C.R.S.~~

SECTION 14. In Colorado Revised Statutes, 10-1-103, **amend** (5) as follows:

10-1-103. Division of insurance - subject to repeal - repeal of functions. (5) The office of the division of insurance is a public office. EXCEPT AS OTHERWISE PROVIDED BY LAW, the documents, materials, and information of the office or on file in the office are public records of this state, and information shall be furnished to anyone applying for the information; except that documents, materials, and information provided by the regulatory officials of any state, federal agency, or foreign country

and by the national association of insurance commissioners shall be given confidential treatment if such documents, materials, and information are treated as confidential in such other state or foreign country or by such other federal agency or the national association of insurance commissioners. Notwithstanding any provision of this subsection (5) to the contrary, the commissioner or the commissioner's designee may share otherwise confidential documents, materials, and information with regulatory officials of any state, federal agency, or foreign country and with the national association of insurance commissioners if the association or the regulatory official of the other state, federal agency, or foreign country agrees and has the legal authority to maintain the same level of confidentiality as applies to the documents, materials, and information under Colorado law.

SECTION 15. In Colorado Revised Statutes, 24-10-115.5, **amend** (2) as follows:

24-10-115.5. Authority for public entities to pool insurance coverage. (2) Any self-insurance pool authorized by subsection (1) of this section shall not be construed to be an insurance company nor otherwise subject to ~~the provisions of~~ the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5). ~~and (10), C.R.S.~~

SECTION 16. In Colorado Revised Statutes, 29-13-102, **amend** (2) as follows:

29-13-102. Authority for units of local government to pool insurance coverage. (2) Any self-insurance pool authorized by subsection (1) of this section shall not be construed to be an insurance company nor otherwise subject to ~~the provisions of~~ the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5). ~~and (10), C.R.S.~~

SECTION 17. Act subject to petition - effective date. This act takes effect January 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or

part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO