S T A T E O F N E W Y O R K

3077

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. CALHOUN -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to enacting the market conduct surveillance act, and to repeal certain sections of such law relating to administrative and procedural provisions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new article 3-A to read as follows:

ARTICLE 3-A

MARKET CONDUCT SURVEILLANCE ACT

SECTION 360. SHORT TITLE.
361. PURPOSE AND LEGISLATIVE INTENT.
362. DEFINITIONS.
363. MARKET ANALYSIS PROCEDURES.
364. PROTOCOLS FOR MARKET CONDUCT ACTIONS.
365. TARGETED ON-SITE MARKET CONDUCT EXAMINATIONS.
366. CONFIDENTIALITY REQUIREMENTS.
367. MARKET CONDUCT SURVEILLANCE PERSONNEL.
368. IMMUNITY FOR MARKET CONDUCT SURVEILLANCE PERSONNEL.
369. FINES AND PENALTIES.
370. PARTICIPATION IN NATIONAL MARKET CONDUCT DATABASES.
371. COORDINATION WITH OTHER STATES THROUGH THE NAIC.
372. ADDITIONAL DUTIES OF THE SUPERINTENDENT.

S 360. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "MARKET CONDUCT SURVEILLANCE ACT".

S 361. PURPOSE AND LEGISLATIVE INTENT. THE PURPOSE OF THIS ARTICLE IS TO ESTABLISH A FRAMEWORK FOR THE DEPARTMENT'S MARKET CONDUCT ACTIONS, INCLUDING:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) PROCESSES AND SYSTEMS FOR IDENTIFYING, ASSESSING AND PRIORITIZING MARKET CONDUCT PROBLEMS THAT HAVE A SUBSTANTIAL ADVERSE IMPACT ON CONSUMERS, POLICYHOLDERS AND CLAIMANTS;

(B) MARKET CONDUCT ACTIONS BY THE SUPERINTENDENT TO SUBSTANTIATE SUCH MARKET CONDUCT PROBLEMS AND A MEANS TO REMEDY SIGNIFICANT MARKET CONDUCT PROBLEMS; AND

(C) PROCEDURES TO COMMUNICATE AND COORDINATE MARKET CONDUCT ACTIONS AMONG STATES TO FOSTER THE MOST EFFICIENT AND EFFECTIVE USE OF RESOURCES.

S 362. DEFINITIONS. (A) "COMPLAINT" MEANS A WRITTEN OR DOCUMENTED ORAL COMMUNICATION MADE TO THE DEPARTMENT PRIMARILY EXPRESSING A GRIEVANCE, MEANING AN EXPRESSION OF DISSATISFACTION. FOR HEALTH COMPANIES, A GRIEVANCE IS A WRITTEN COMPLAINT SUBMITTED BY OR ON BEHALF OF A COVERED PERSON.

(B) "MARKET CONDUCT ACTION" MEANS ANY OF THE FULL RANGE OF ACTIVITIES THAT THE SUPERINTENDENT MAY INITIATE TO ASSESS THE MARKET AND PRACTICES OF INDIVIDUAL INSURERS, BEGINNING WITH MARKET ANALYSIS AND EXTENDING TO TARGETED EXAMINATIONS.

(C) "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 AND TO IDENTIFY PATTERNS OR PRACTICES OF INSURERS THAT DEVIATE SIGNIFICANTLY FROM THE NORM OR THAT MAY POSE A POTENTIAL RISK TO THE INSURANCE CONSUMER.

(D) "MARKET CONDUCT SURVEILLANCE PERSONNEL" MEANS THOSE INDIVIDUALS EMPLOYED OR CONTRACTED BY THE SUPERINTENDENT TO COLLECT, ANALYZE, REVIEW OR ACT ON INFORMATION ON THE INSURANCE MARKETPLACE WHICH IDENTIFIES PATTERNS OR PRACTICES OF INSURERS.

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

(F) "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.

(G) "NAIC MARKET CONDUCT EXAMINER'S HANDBOOK" MEANS THE SET OF GUIDELINES DEVELOPED AND ADOPTED BY THE NAIC, WHICH DOCUMENTS ESTABLISHED PRACTICES TO BE USED BY MARKET CONDUCT SURVEILLANCE PERSONNEL IN DEVELOPING AND EXECUTING AN EXAMINATION.

(H) "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.

(I) "NAIC 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.

(J) "QUALIFIED CONTRACT EXAMINER" MEANS A PERSON UNDER CONTRACT TO THE SUPERINTENDENT, WHO IS QUALIFIED BY EDUCATION, EXPERIENCE AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS, TO PERFORM MARKET CONDUCT ACTIONS.

(K) "TARGETED EXAMINATION" MEANS A FOCUSED EXAM, BASED ON THE RESULTS OF MARKET ANALYSIS INDICATING THE NEED TO REVIEW EITHER A SPECIFIC LINE OF BUSINESS OR SPECIFIC BUSINESS PRACTICES, INCLUDING BUT NOT LIMITED TO, UNDERWRITING AND RATING, MARKETING AND SALES, COMPLAINT HANDLING OPERATIONS/MANAGEMENT, ADVERTISING MATERIALS, LICENSING, POLICYHOLDER SERVICES, NON-FORFEITURES, CLAIMS HANDLING, OR POLICY FORMS AND FILINGS.

A TARGETED EXAMINATION MAY BE CONDUCTED BY DESK EXAMINATION OR BY AN ON-SITE EXAMINATION:

(1) "DESK EXAMINATION" MEANS A TARGETED EXAMINATION THAT IS CONDUCTED BY AN EXAMINER AT A LOCATION OTHER THAN THE INSURER'S PREMISES. A DESK EXAMINATION IS USUALLY PERFORMED AT THE DEPARTMENT'S OFFICES WITH THE INSURER PROVIDING REQUESTED DOCUMENTS BY HARD COPY, MICROFICHE, DISCS OR OTHER ELECTRONIC MEDIA, FOR REVIEW.

(2) "ON-SITE EXAMINATION" MEANS A TARGETED EXAMINATION CONDUCTED AT THE INSURER'S HOME OFFICE OR THE LOCATION WHERE THE RECORDS UNDER REVIEW ARE STORED.

(L) "SIGNIFICANT PREMIUM VOLUME" MEANS FIVE PERCENT OR MORE OF AN INSURER'S TOTAL DIRECT BUSINESS PREMIUM FOR A GIVEN CATEGORY OF COVERAGE AS IDENTIFIED ON THE INSURER'S ANNUAL FINANCIAL STATEMENT.

(M) "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.

S 363. MARKET ANALYSIS PROCEDURES. (A)(1) THE SUPERINTENDENT SHALL GATHER INFORMATION FROM DATA CURRENTLY AVAILABLE TO THE DEPARTMENT, AS WELL AS SURVEYS AND REQUIRED REPORTING REQUIREMENTS, INFORMATION COLLECTED BY THE NAIC AND A VARIETY OF OTHER SOURCES IN BOTH THE PUBLIC AND PRIVATE SECTORS, AND INFORMATION FROM WITHIN AND OUTSIDE THE INSURANCE INDUSTRY.

(2) SUCH INFORMATION SHALL BE ANALYZED IN ORDER TO DEVELOP A BASELINE UNDERSTANDING OF THE MARKETPLACE AND TO IDENTIFY FOR FURTHER REVIEW INSURERS AND/OR PRACTICES THAT DEVIATE SIGNIFICANTLY FROM THE NORM OR THAT MAY POSE A POTENTIAL RISK TO THE INSURANCE CONSUMER. THE SUPERINTENDENT SHALL USE THE NAIC MARKET ANALYSIS HANDBOOK AS ONE RESOURCE IN PERFORMING THIS ANALYSIS (OR PROCEDURES, ADOPTED BY REGULATION, THAT ARE SUBSTANTIALLY SIMILAR TO THE NAIC MARKET ANALYSIS HANDBOOK).

(B) IF THE ANALYSIS COMPELS THE SUPERINTENDENT TO INQUIRE FURTHER INTO A PARTICULAR INSURER OR PRACTICE, THE FOLLOWING CONTINUUM OF MARKET CONDUCT ACTIONS MAY BE CONSIDERED PRIOR TO CONDUCTING A TARGETED, ON-SITE MARKET CONDUCT EXAMINATION. THE ACTION SELECTED SHALL BE MADE KNOWN TO THE INSURER IN WRITING. THESE ACTIONS MAY INCLUDE, BUT SHALL NOT BE LIMITED TO:

(1) CORRESPONDENCE WITH THE INSURER;

(2) INSURER INTERVIEWS;

(3) INFORMATION GATHERING;

(4) POLICY AND PROCEDURE REVIEWS;

(5) INTERROGATORIES;

(6) REVIEW OF INSURER SELF-EVALUATION (IF NOT SUBJECT TO A PRIVILEGE OF CONFIDENTIALITY) AND COMPLIANCE PROGRAMS, INCLUDING MEMBERSHIP IN A BEST-PRACTICE ORGANIZATION;

(7) DESK EXAMINATION.

THE SUPERINTENDENT SHALL SELECT A MARKET CONDUCT ACTION THAT IS COST EFFECTIVE FOR THE DEPARTMENT AND THE INSURER, WHILE STILL PROTECTING THE INSURANCE CONSUMER.

(C) THE SUPERINTENDENT SHALL TAKE THOSE STEPS REASONABLY NECESSARY TO ELIMINATE DUPLICATIVE INQUIRIES AND COORDINATE MARKET CONDUCT ACTIONS AND FINDINGS WITH OTHER STATES.

S 364. PROTOCOLS FOR MARKET CONDUCT ACTIONS. (A) MARKET CONDUCT ACTIONS TAKEN AS A RESULT OF A MARKET ANALYSIS SHALL FOCUS ON THE GENERAL BUSINESS PRACTICES AND COMPLIANCE ACTIVITIES OF INSURERS, RATHER THAN IDENTIFYING INFREQUENT OR UNINTENTIONAL RANDOM ERRORS.

(B) (1) THE SUPERINTENDENT IS AUTHORIZED TO DETERMINE THE FREQUENCY AND TIMING OF SUCH MARKET CONDUCT ACTIONS. THE TIMING SHALL DEPEND UPON

THE SPECIFIC MARKET CONDUCT ACTION TO BE INITIATED, UNLESS EXTRAORDINARY CIRCUMSTANCES INDICATING A RISK TO CONSUMERS REQUIRE IMMEDIATE ACTION.

(2) IF THE SUPERINTENDENT HAS INFORMATION THAT MORE THAN ONE INSURER IS ENGAGED IN COMMON PRACTICES THAT MAY VIOLATE STATUTE OR REGULATIONS, HE/SHE MAY SCHEDULE AND COORDINATE MULTIPLE EXAMINATIONS SIMULTANEOUSLY.

(C) THE INSURER MAY BE GIVEN AN OPPORTUNITY TO RESOLVE MATTERS THAT ARISE AS A RESULT OF A MARKET ANALYSIS TO THE SATISFACTION OF THE SUPERINTENDENT BEFORE ANY ADDITIONAL MARKET CONDUCT ACTIONS ARE TAKEN AGAINST THE INSURER.

(D) FOR ANY CHANGE MADE TO AN NAIC WORK PRODUCT REFERENCED IN THIS ARTICLE WHICH MATERIALLY CHANGES THE WAY IN WHICH MARKET CONDUCT ACTIONS ARE CONDUCTED, THE SUPERINTENDENT SHALL GIVE NOTICE AND PROVIDE PARTIES WITH AN OPPORTUNITY FOR A PUBLIC HEARING PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT. IF NO HEARING IS HELD, THE SUPERINTENDENT SHALL USE THE VERSIONS OF SUCH WORK PRODUCTS MOST RECENTLY DEVELOPED AND ADOPTED BY THE NAIC.

S 365. TARGETED ON-SITE MARKET CONDUCT EXAMINATIONS. (A) WHEN LESS INTRUSIVE MARKET CONDUCT ACTIONS IDENTIFIED IN SUBSECTION (B) OF SECTION THREE HUNDRED SIXTY-THREE OF THIS ARTICLE ARE NOT APPROPRIATE, THE SUPERINTENDENT IS AUTHORIZED TO CONDUCT TARGETED, ON-SITE MARKET CONDUCT EXAMINATIONS IN ACCORDANCE WITH THE NAIC MARKET CONDUCT UNIFORM EXAMINATION PROCEDURES AND THE MARKET CONDUCT EXAMINERS HANDBOOK (OR PROCEDURES, ADOPTED BY REGULATION, THAT ARE SUBSTANTIALLY SIMILAR TO THE FOREGOING NAIC PRODUCTS).

(B) CONCOMITANT WITH THE NOTIFICATION REQUIREMENTS ESTABLISHED IN SUBSECTION (E) OF THIS SECTION, THE SUPERINTENDENT SHALL POST NOTIFICATION ON THE NAIC EXAMINATION TRACKING SYSTEM, OR COMPARABLE NAIC PRODUCT AS DETERMINED BY THE SUPERINTENDENT, THAT A MARKET CONDUCT EXAMINATION HAS BEEN SCHEDULED.

(C) IN LIEU OF AN EXAMINATION OF A FOREIGN OR ALIEN INSURER LICENSED IN THIS STATE UNDER THIS ARTICLE, THE SUPERINTENDENT MAY ACCEPT AN EXAMINATION REPORT ON THE INSURER AS PREPARED BY THE SUPERINTENDENT OF THE INSURER'S STATE OF DOMICILE OR OF A STATE IN WHICH THE INSURER WROTE SIGNIFICANT PREMIUM VOLUME, ACCORDING TO SUCH INSURER'S MOST RECENT ANNUAL FINANCIAL STATEMENT, PROVIDED THAT THE STATE HAS ADOPTED THIS LAW OR A MARKET CONDUCT SURVEILLANCE LAW THAT THE SUPERINTENDENT DEEMS COMPARABLE.

(D) (1) PRIOR TO COMMENCEMENT OF A TARGETED ON-SITE MARKET CONDUCT EXAMINATION, MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL PREPARE A WORK PLAN AND PROPOSED BUDGET. SUCH PROPOSED BUDGET, WHICH SHALL BE REASONABLE FOR THE SCOPE OF THE EXAMINATION, AND WORK PLAN SHALL BE PROVIDED TO THE COMPANY UNDER EXAMINATION.

(2) MARKET CONDUCT EXAMINATIONS SHALL, TO THE EXTENT FEASIBLE, UTILIZE DESK EXAMINATIONS AND DATA REQUESTS PRIOR TO A TARGETED ON-SITE EXAMINATION.

(3) MARKET CONDUCT EXAMINATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THE NAIC MARKET CONDUCT EXAMINERS HANDBOOK AND THE NAIC MARKET CONDUCT UNIFORM EXAMINATIONS PROCEDURES (OR PROCEDURES, ADOPTED BY REGULATION, THAT ARE SUBSTANTIALLY SIMILAR TO THE FOREGOING NAIC PRODUCTS).

(4) PRIOR TO THE CONCLUSION OF A TARGETED ON-SITE MARKET CONDUCT EXAMINATION, THE INDIVIDUAL AMONG THE MARKET CONDUCT SURVEILLANCE PERSONNEL WHO IS DESIGNATED AS THE EXAMINER-IN-CHARGE SHALL SCHEDULE AN EXIT CONFERENCE WITH THE INSURER.

(E) ANNOUNCEMENT OF THE EXAMINATION SHALL BE SENT TO THE INSURER AND POSTED ON THE NAIC'S EXAMINATION TRACKING SYSTEM (OR COMPARABLE NAIC

PRODUCT, AS DETERMINED BY THE SUPERINTENDENT) AS SOON AS POSSIBLE BUT IN NO CASE LATER THAN SIXTY DAYS BEFORE THE ESTIMATED COMMENCEMENT OF THE ON-SITE EXAMINATION. SUCH ANNOUNCEMENT SHALL CONTAIN:

(1) THE NAME AND ADDRESS OF THE INSURER OR INSURERS BEING EXAMINED;

(2) THE NAME AND CONTACT INFORMATION OF THE EXAMINER-IN-CHARGE;

(3) THE REASON OR REASONS FOR THE TARGETED, ON-SITE EXAMINATION;

(4) THE DATE THE ON-SITE EXAMINATION IS SCHEDULED TO BEGIN;

(5) NOTICE OF ANY NON-INSURANCE DEPARTMENT PERSONNEL WHO WILL ASSIST IN THE EXAMINATION;

(6) A BUDGET AND WORK PLAN FOR THE TARGETED, ON-SITE EXAMINATION; AND

(7) A REQUEST FOR THE INSURER TO NAME ITS EXAMINATION COORDINATOR.

(F) THE SUPERINTENDENT SHALL CONDUCT A PRE-EXAMINATION CONFERENCE WITH THE INSURER EXAMINATION COORDINATOR AND KEY PERSONNEL TO CLARIFY EXPECTATIONS THIRTY DAYS PRIOR TO COMMENCEMENT OF THE EXAMINATION.

(G) THE DEPARTMENT SHALL USE THE NAIC STANDARD DATA REQUEST (OR COMPARABLE PRODUCT, ADOPTED BY REGULATION, THAT IS SUBSTANTIALLY SIMILAR TO THE FOREGOING NAIC PRODUCT).

(H) (1) THE SUPERINTENDENT SHALL ADHERE TO THE FOLLOWING TIMELINE, UNLESS A MUTUAL AGREEMENT IS REACHED WITH THE INSURER TO MODIFY THE TIMELINE:

(A) THE SUPERINTENDENT SHALL DELIVER THE DRAFT REPORT TO THE INSURER WITHIN SIXTY DAYS OF THE COMPLETION OF THE EXAMINATION. COMPLETION OF THE EXAMINATION SHALL BE DEFINED AS THE DATE THE SUPERINTENDENT CONFIRMS IN WRITING THAT THE EXAMINATION IS COMPLETED.

(B) THE INSURER MUST RESPOND WITH WRITTEN COMMENTS WITHIN THIRTY DAYS OF RECEIPT OF THE DRAFT REPORT.

(C) THE DEPARTMENT MUST INFORMALLY RESOLVE ISSUES AND PREPARE A FINAL REPORT WITHIN THIRTY DAYS OF RECEIPT OF THE INSURER'S WRITTEN COMMENTS, UNLESS A MUTUAL AGREEMENT IS REACHED TO EXTEND THE DEADLINE. THE SUPERINTENDENT MAY MAKE CORRECTIONS AND OTHER CHANGES, AS APPROPRIATE.

(D) THE INSURER SHALL, WITHIN THIRTY DAYS, ACCEPT THE FINAL REPORT, ACCEPT THE FINDINGS OF THE REPORT OR REQUEST A HEARING. AN ADDITIONAL THIRTY DAYS SHALL BE ALLOWED IF AGREED TO BY THE SUPERINTENDENT AND THE INSURER. ANY SUCH HEARING REQUEST MUST BE MADE IN WRITING AND MUST BE CONDUCTED PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT.

(2) THE FINAL WRITTEN AND ELECTRONIC MARKET CONDUCT REPORT SHALL INCLUDE THE INSURER'S WRITTEN COMMENTS AND ANY AGREED-TO CORRECTIONS OR CHANGES.

(I) (1) UPON ADOPTION OF THE EXAMINATION REPORT PURSUANT TO SUBSECTION (H) OF THIS SECTION, THE SUPERINTENDENT SHALL CONTINUE TO HOLD THE CONTENT OF THE EXAMINATION REPORT AS PRIVATE AND CONFIDENTIAL FOR A PERIOD OF THIRTY DAYS, EXCEPT TO THE EXTENT PROVIDED FOR IN PARAGRAPH TWO OF THIS SUBSECTION. THEREAFTER, THE SUPERINTENDENT SHALL OPEN THE REPORT FOR PUBLIC INSPECTION, PROVIDED NO COURT OF COMPETENT JURISDICTION HAS STAYED ITS PUBLICATION.

(2) NOTHING CONTAINED IN THIS ARTICLE SHALL PREVENT OR BE CONSTRUED AS PREVENTING THE SUPERINTENDENT FROM DISCLOSING THE CONTENT OF AN EXAMINATION REPORT, PRELIMINARY EXAMINATION REPORT OR RESULTS, OR ANY MATTER RELATING THERETO, TO THE DEPARTMENT OF THIS OR ANY OTHER STATE OR AGENCY OF THE FEDERAL GOVERNMENT AT ANY TIME, PROVIDED THE AGENCY OR OFFICE RECEIVING THE REPORT OR MATTERS RELATING THERETO AGREES TO HOLD IT CONFIDENTIAL AND IN A MANNER CONSISTENT WITH THIS ARTICLE.

(J) (1) WHERE THE REASONABLE AND NECESSARY COST OF A MARKET CONDUCT EXAMINATION IS TO BE ASSESSED AGAINST THE INSURER UNDER EXAMINATION, SUCH FEES SHALL BE CONSISTENT WITH THAT OTHERWISE AUTHORIZED BY LAW.

SUCH FEES SHALL BE ITEMIZED AND BILLS SHALL BE PROVIDED TO THE INSURER ON A MONTHLY BASIS FOR REVIEW PRIOR TO SUBMISSION FOR PAYMENT.

(2) THE SUPERINTENDENT SHALL MAINTAIN ACTIVE MANAGEMENT AND OVERSIGHT OF EXAMINATION COSTS, INCLUDING COSTS ASSOCIATED WITH HIS OR HER OWN EXAMINERS AND WITH RETAINING QUALIFIED CONTRACT EXAMINERS NECESSARY TO PERFORM AN ON-SITE EXAMINATION. TO THE EXTENT THE SUPERINTENDENT RETAINS OUTSIDE ASSISTANCE, THE SUPERINTENDENT MUST HAVE IN WRITING PROTOCOLS THAT:

(A) CLEARLY IDENTIFY THE TYPES OF FUNCTIONS TO BE SUBJECT TO OUTSOURCING;

(B) PROVIDE SPECIFIC TIMELINES FOR COMPLETION OF THE OUTSOURCED REVIEW;

(C) REQUIRE DISCLOSURE OF CONTRACT EXAMINERS' RECOMMENDATIONS;

(D) ESTABLISH AND UTILIZE A DISPUTE RESOLUTION OR ARBITRATION MECHANISM TO RESOLVE CONFLICTS WITH INSURERS REGARDING EXAMINATION FEES; AND

(E) REQUIRE DISCLOSURE OF THE TERMS OF THE CONTRACTS WITH THE OUTSIDE CONSULTANTS THAT WILL BE USED, SPECIFICALLY THE FEES AND/OR HOURLY RATES THAT CAN BE CHARGED.

(3) THE SUPERINTENDENT SHALL REVIEW AND AFFIRMATIVELY ENDORSE DETAILED BILLINGS FROM THE QUALIFIED CONTRACT EXAMINER BEFORE THE DETAILED BILLINGS ARE SENT TO THE INSURER.

S 366. CONFIDENTIALITY REQUIREMENTS. (A) EXCEPT AS OTHERWISE PROVIDED BY LAW, MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL HAVE FREE AND FULL ACCESS TO ALL BOOKS AND RECORDS, EMPLOYEES, OFFICERS AND DIRECTORS, AS PRACTICABLE, OF THE INSURER DURING REGULAR BUSINESS HOURS. AN INSURER UTILIZING A THIRD-PARTY MODEL OR PRODUCT FOR ANY OF THE ACTIVITIES UNDER EXAMINATION SHALL CAUSE, UPON THE REQUEST OF MARKET CONDUCT SURVEILLANCE PERSONNEL, THE DETAILS OF SUCH MODELS OR PRODUCTS TO BE MADE AVAILABLE TO SUCH PERSONNEL. ALL DOCUMENTS, INCLUDING BUT NOT LIMITED TO WORKING PAPERS, THIRD PARTY MODELS OR PRODUCTS, COMPLAINT LOGS, AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN THE COURSE OF ANY MARKET CONDUCT ACTIONS MADE PURSUANT TO THIS ARTICLE, OR IN THE COURSE OF MARKET ANALYSIS BY THE SUPERINTENDENT OF THE MARKET CONDITIONS OF AN INSURER, OR OBTAINED BY THE NAIC AS A RESULT OF ANY OF THE PROVISIONS OF THIS ARTICLE, SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL NOT BE SUBJECT TO SUBPOENA AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION.

(B) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE DOCUMENTS, MATERIALS, OR INFORMATION SHALL OCCUR AS A RESULT OF DISCLOSURE TO THE SUPERINTENDENT UNDER THIS SECTION.

(C) MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL BE VESTED WITH THE POWER TO ISSUE SUBPOENAS AND EXAMINE INSURANCE COMPANY PERSONNEL UNDER OATH WHEN SUCH ACTION IS ORDERED BY THE SUPERINTENDENT PURSUANT TO THIS ARTICLE.

(D) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, IN ORDER TO ASSIST IN THE PERFORMANCE OF THE SUPERINTENDENT'S DUTIES, THE SUPERINTENDENT MAY:

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

(2) 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 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 OR INFORMATION; AND

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

S 367. MARKET CONDUCT SURVEILLANCE PERSONNEL. (A) MARKET CONDUCT SURVEILLANCE PERSONNEL SHALL BE QUALIFIED BY EDUCATION, EXPERIENCE AND, WHERE APPLICABLE, PROFESSIONAL DESIGNATIONS. THE SUPERINTENDENT MAY SUPPLEMENT THE IN-HOUSE MARKET CONDUCT SURVEILLANCE STAFF WITH QUALIFIED OUTSIDE PROFESSIONAL ASSISTANCE IF HE OR SHE DETERMINES THAT SUCH ASSISTANCE IS NECESSARY.

(B) MARKET CONDUCT SURVEILLANCE PERSONNEL HAVE A CONFLICT OF INTEREST, EITHER DIRECTLY OR INDIRECTLY, IF THEY ARE AFFILIATED WITH THE MANAGEMENT, HAVE BEEN EMPLOYED BY, OR OWN A PECUNIARY INTEREST IN THE INSURER SUBJECT TO ANY EXAMINATION UNDER THIS ARTICLE. THIS SECTION SHALL NOT BE CONSTRUED TO AUTOMATICALLY PRECLUDE AN INDIVIDUAL FROM BEING:

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

(2) A GRANTEE OF A MORTGAGE OR SIMILAR INSTRUMENT ON THE INDIVIDUAL'S RESIDENCE FROM A REGULATED ENTITY IF DONE UNDER CUSTOMARY TERMS AND IN THE ORDINARY COURSE OF BUSINESS;

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

(4) A SETTLOR OR BENEFICIARY OF A "BLIND TRUST" INTO WHICH ANY OTHERWISE PERMISSIBLE HOLDINGS HAVE BEEN PLACED.

S 368. IMMUNITY FOR MARKET CONDUCT SURVEILLANCE PERSONNEL. (A) NO CAUSE OF ACTION SHALL ARISE NOR SHALL ANY LIABILITY BE IMPOSED AGAINST THE SUPERINTENDENT, THE SUPERINTENDENT'S AUTHORIZED REPRESENTATIVES OR AN EXAMINER APPOINTED BY THE SUPERINTENDENT FOR ANY STATEMENTS MADE OR CONDUCT PERFORMED IN GOOD FAITH WHILE CARRYING OUT THE PROVISIONS OF THIS ARTICLE.

(B) NO CAUSE OF ACTION SHALL ARISE, NOR SHALL ANY LIABILITY BE IMPOSED AGAINST ANY PERSON FOR THE ACT OF COMMUNICATING OR DELIVERING INFORMATION OR DATA TO THE SUPERINTENDENT OR THE SUPERINTENDENT'S AUTHORIZED REPRESENTATIVE OR EXAMINER PURSUANT TO AN EXAMINATION MADE UNDER THIS ARTICLE, IF THE ACT OF COMMUNICATION OR DELIVERY WAS PERFORMED IN GOOD FAITH AND WITHOUT FRAUDULENT INTENT OR THE INTENT TO DECEIVE.

(C) A PERSON IDENTIFIED IN SUBSECTION (A) OF THIS SECTION SHALL BE ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS IF HE OR SHE IS THE PREVAILING PARTY IN A CIVIL CAUSE OF ACTION FOR LIBEL, SLANDER OR ANY OTHER RELEVANT TORT ARISING OUT OF ACTIVITIES IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE AND THE PARTY BRINGING THE ACTION WAS NOT SUBSTANTIALLY JUSTIFIED IN DOING SO. 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.

(D) THIS SECTION DOES NOT ABROGATE OR MODIFY IN ANY WAY ANY COMMON LAW OR STATUTORY PRIVILEGE OR IMMUNITY HERETOFORE ENJOYED BY ANY PERSON IDENTIFIED IN SUBSECTION (A) OF THIS SECTION.

S 369. FINES AND PENALTIES. (A) FINES AND PENALTIES LEVIED PURSUANT TO THIS ARTICLE OR OTHER PROVISIONS OF THIS CHAPTER SHALL BE CONSISTENT, REASONABLE AND JUSTIFIED.

(B) THE SUPERINTENDENT SHALL TAKE INTO CONSIDERATION ACTIONS TAKEN BY INSURERS THAT MAINTAIN MEMBERSHIP IN BEST-PRACTICE ORGANIZATIONS THAT EXIST TO PROMOTE HIGH ETHICAL STANDARDS OF CONDUCT IN THE MARKETPLACE, AND INSURERS THAT SELF ASSESS, SELF-REPORT AND REMEDIATE PROBLEMS DETECTED TO MITIGATE FINES LEVIED PURSUANT TO THIS ARTICLE.

S 370. PARTICIPATION IN NATIONAL MARKET CONDUCT DATABASES. (A) THE SUPERINTENDENT SHALL COLLECT AND 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 COMPARABLE SUCCESSOR NAIC PRODUCTS AS DETERMINED BY THE SUPERINTENDENT. COMPLAINTS REPORTED TO THE COMPLAINT DATABASE SYSTEM SHALL BE JUSTIFIED COMPLAINTS THAT HAVE BEEN SUBSTANTIATED BY THE DEPARTMENT CONSUMER SERVICE OR OTHER APPROPRIATE PERSONNEL.

(B) INFORMATION COLLECTED AND MAINTAINED BY THE DEPARTMENT SHALL BE COMPILED IN A MANNER THAT MEETS THE REQUIREMENTS OF THE NAIC.

S 371. COORDINATION WITH OTHER STATES THROUGH THE NAIC. THE SUPERINTENDENT SHALL SHARE INFORMATION AND COORDINATE THE DEPARTMENT'S MARKET ANALYSIS AND EXAMINATION EFFORTS WITH OTHER STATES THROUGH THE NAIC.

S 372. ADDITIONAL DUTIES OF THE SUPERINTENDENT. (A) AT LEAST ONCE PER YEAR, OR MORE FREQUENTLY IF DEEMED NECESSARY, THE SUPERINTENDENT SHALL PROVIDE IN AN APPROPRIATE MANNER TO INSURERS AND OTHER ENTITIES SUBJECT TO THE SCOPE OF THIS ARTICLE INFORMATION ON NEW LAWS AND REGULATIONS, ENFORCEMENT ACTIONS AND OTHER INFORMATION THE SUPERINTENDENT DEEMS PERTINENT TO ENSURE COMPLIANCE WITH MARKET CONDUCT REQUIREMENTS.

(B) THE SUPERINTENDENT SHALL DESIGNATE A SPECIFIC PERSON OR PERSONS WITHIN THE DEPARTMENT WHOSE RESPONSIBILITIES SHALL INCLUDE THE RECEIPT OF INFORMATION FROM EMPLOYEES OF INSURERS AND LICENSED ENTITIES CONCERNING VIOLATIONS OF LAWS, RULES OR REGULATIONS BY EMPLOYERS. SUCH PERSON OR PERSONS SHALL BE PROVIDED WITH PROPER TRAINING ON THE HANDLING OF SUCH INFORMATION, WHICH SHALL BE DEEMED A CONFIDENTIAL COMMUNICATION FOR THE PURPOSES OF THIS SECTION.

S 2. Sections 309, 310, 311, 312 and 313 of the insurance law are REPEALED.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.