



1           **§431: -2 Definitions.** As used in this article, unless  
2 the context indicates otherwise:

3           "Commissioner" means the insurance commissioner.

4           "Complaint" means a written or documented oral  
5 communication to the insurance division primarily expressing a  
6 grievance, meaning an expression of dissatisfaction. For health  
7 companies, a grievance is a written complaint submitted by or on  
8 behalf of a covered person.

9           "Comprehensive market conduct examination" means a review  
10 of one or more lines of business of an insurer domiciled in this  
11 state that is not conducted for cause. The term includes a  
12 review of rating, tier classification, underwriting,  
13 policyholder service, claims, marketing and sales, producer  
14 licensing, complaint handling practices, or compliance  
15 procedures and policies.

16           "Insurance compliance audit" means a voluntary, internal  
17 evaluation, review, assessment, audit, or investigation for the  
18 purpose of identifying or preventing noncompliance with, or  
19 promoting compliance with laws, regulations, orders, or industry  
20 or professional standards, which is conducted by or on behalf of  
21 a company licensed or regulated under this code, or which  
22 involves an activity regulated under this code.



1 "Insurance compliance self-evaluative audit document" means  
2 documents prepared as a result of or in connection with an  
3 insurance compliance audit. An insurance compliance self-  
4 evaluative audit document may include a written response to the  
5 findings of an insurance compliance audit. An insurance  
6 compliance self-evaluative audit document may include, but is  
7 not limited to, as applicable, field notes and records of  
8 observations, findings, opinions, suggestions, conclusions,  
9 drafts, memoranda, drawings, photographs, exhibits, computer  
10 generated or electronically recorded information, phone records,  
11 maps, charts, graphs, and surveys; provided that this supporting  
12 information is collected or developed for the primary purpose  
13 and in the course of an insurance compliance audit.

14 "Market analysis" means a process whereby market conduct  
15 surveillance personnel collect and analyze information from  
16 filed schedules, surveys, required reports, and other sources to  
17 develop a baseline and to identify patterns or practices of  
18 insurers licensed to do business in this state that deviate  
19 significantly from the norm or that may pose a potential risk to  
20 the insurance consumer.

21 "Market conduct action" means any of the full range of  
22 activities that the commissioner may initiate to assess the



1 market and practices of individual insurers, beginning with  
2 market analysis and extending to targeted examinations. The  
3 commissioner's activities to resolve an individual consumer  
4 complaint or other reports of a specific instance of misconduct  
5 are not market conduct actions for purposes of this article.

6 "Market conduct examination" means the examination of the  
7 insurance operations of an insurer licensed to do business in  
8 this state to evaluate compliance with the applicable laws and  
9 rules of this State. A market conduct examination may be either  
10 a comprehensive examination or a targeted examination. A market  
11 conduct examination is separate and distinct from a financial  
12 examination of an insurer performed pursuant to article 5, but  
13 may be conducted at the same time.

14 "Market conduct surveillance personnel" means those  
15 individuals employed or contracted by the commissioner to  
16 collect, analyze, review, or act on information on the insurance  
17 marketplace, which identifies patterns or practices of insurers.

18 "National Association of Insurance Commissioners" means the  
19 organization of insurance regulators from the fifty states, the  
20 District of Columbia, and the four United States territories.

21 "Qualified contract examiner" means a person under contract  
22 to the commissioner, who is qualified by education, experience



1 and, where applicable, professional designations, to perform  
2 market conduct actions.

3 "Targeted examination" means a focused exam conducted for  
4 cause, based on the results of market analysis indicating the  
5 need to review either a specific line of business or specific  
6 business practices, including but not limited to underwriting  
7 and rating, marketing and sales, complaint handling operations,  
8 advertising materials, licensing, policyholder services, non-  
9 forfeitures, claims handling, or policy forms and filings. A  
10 targeted examination may be conducted by desk examination or by  
11 an on-site examination.

12 "Third party model or product" means a model or product  
13 provided by an entity separate from and not, under direct or  
14 indirect corporate control of the insurer using the model or  
15 product.

16 **§431: -3 Domestic responsibility and deference to other**  
17 **states.** (a) The commissioner shall be responsible for  
18 conducting market conduct examinations for policyholder  
19 protection, which shall be accomplished by comprehensive or  
20 targeted examinations of domestic insurers and targeted  
21 examinations of foreign insurers as deemed necessary by the  
22 commissioner, based on the results of market analysis. The



1 commissioner may delegate responsibility for conducting an  
2 examination of a domestic insurer, foreign insurer, or an  
3 affiliate of an insurer to the insurance commissioner of another  
4 state if that state's insurance commissioner agrees to accept  
5 the delegated responsibility for the examination.

6 (b) The commissioner may delegate responsibility to a  
7 commissioner of a state in which the domestic insurer, foreign  
8 insurer, or affiliate has a significant number of policies or  
9 significant premium volume, as determined by the commissioner by  
10 rule.

11 (c) If the commissioner elects to delegate responsibility  
12 for examining an insurer, the commissioner shall accept a report  
13 of the examination prepared by the commissioner to whom the  
14 responsibility has been delegated.

15 (d) In lieu of conducting a market conduct examination of  
16 an insurer, the commissioner shall accept a report of a market  
17 conduct examination on the insurer prepared by the insurance  
18 commissioner of the insurer's state of domicile or another  
19 state; provided:

20 (1) The laws of that state applicable to the subject of  
21 the examination are deemed by the commissioner to be  
22 substantially similar to those of this State;



1           (2) The examining state has a market conduct surveillance  
2           system that the commissioner deems comparable to the  
3           market conduct surveillance system required under this  
4           article; and

5           (3) The examination from the other state's commissioner  
6           has been conducted within the past three years.

7           (e) If the insurance commissioner to whom the examination  
8           responsibility was delegated pursuant to subsection (a) or the  
9           report of a market conduct examination prepared by the insurance  
10          commissioner of another state pursuant to subsection (d), did  
11          not evaluate the specific area or issue of concern to the  
12          commissioner, the commissioner may pursue a targeted examination  
13          or market analysis of the unexamined area pursuant to this  
14          article.

15          (f) The commissioner's determination under subsection (d)  
16          is discretionary and is not subject to appeal.

17          (g) Subject to a determination under subsection (d), if a  
18          market conduct examination conducted by another state results in  
19          a finding that an insurer should modify a specific practice or  
20          procedure, the commissioner shall accept documentation that the  
21          insurer has made a similar modification in this state, in lieu  
22          of initiating a market conduct action or examination related to



1 that practice or procedure. The commissioner may require other  
2 or additional practice or procedure modifications as are  
3 necessary to achieve compliance with specific state laws or  
4 regulations, which differ substantially from those of the state  
5 that conducted the examination.

6 **§431: -4 Market analysis procedures.** (a) The  
7 commissioner shall gather information from data currently  
8 available to the insurance division, as well as surveys and  
9 required reporting requirements, information collected by the  
10 National Association of Insurance Commissioners and a variety of  
11 other sources in both the public and private sectors,  
12 information from within and outside the insurance industry from  
13 objective sources, information from websites for insurers,  
14 agents, and other organizations, and information from other  
15 sources; provided the sources are published at least annually in  
16 a bulletin or circular, prior to use.

17 The information shall be analyzed to develop a baseline  
18 understanding of the marketplace and to identify for further  
19 review insurers or practices that deviate significantly from the  
20 norm or that may pose a potential risk to the insurance  
21 consumer. The commissioner shall use procedures that are  
22 substantially similar to the National Association of Insurance





1 Commissioners' guidelines on market analysis as one resource in  
2 performing this analysis.

3 The commissioner shall use the following policies and  
4 procedures in performing the analysis required under this  
5 section:

6 (1) Identify key lines of business for systematic review;  
7 and

8 (2) Identify companies for further analysis based on  
9 available information.

10 (b) If the analysis compels the commissioner to inquire  
11 further into a particular insurer or practice, the following  
12 continuum of market conduct actions may be considered prior to  
13 conducting a targeted, on-site market conduct examination. The  
14 action selected shall be made known to the insurer in writing.  
15 These actions may include but are not limited to:

16 (1) Correspondence with the insurer;

17 (2) Insurer interviews;

18 (3) Information gathering;

19 (4) Policy and procedure reviews;

20 (5) Interrogatories; and

21 (6) Review of insurer self-evaluation and compliance

22 programs, including membership in an organization such



1 as a best-practice organization that has as its  
2 central mission the promotion of high ethical  
3 standards in the marketplace.

4 (c) The commissioner shall select a market conduct action  
5 that is cost effective for the insurance division and the  
6 insurer, while still protecting the insurance consumer.

7 (d) The commissioner shall take those steps reasonably  
8 necessary to eliminate requests for information that duplicate  
9 information provided as part of an insurer's annual financial  
10 statement, the annual market conduct statement of the National  
11 Association of Insurance Commissioners, or other required  
12 schedules, surveys, or reports that are regularly submitted to  
13 the commissioner, or with data requests made by other states if  
14 that information is available to the commissioner, unless the  
15 information is state specific, and coordinate market conduct  
16 actions and findings with other states.

17 (e) Causes or conditions, if identified through market  
18 analysis, that may trigger a targeted examination, are:

19 (1) Information obtained from a market conduct annual  
20 statement, market survey or report of financial  
21 examination indicating potential fraud, that the  
22 insurer is conducting the business of insurance



1 without a license or is engaged in a potential pattern  
2 of unfair trade practice in violation of article 13;

3 (2) A number of complaints against the insurer or a  
4 complaint ratio sufficient to indicate potential  
5 fraud, conducting the business of insurance without a  
6 license, or a potential pattern of unfair trade  
7 practice in violation of article 13. For the purposes  
8 of this section, a complaint ratio shall be determined  
9 for each line of business;

10 (3) Information obtained from other objective sources,  
11 such as published advertising materials indicating  
12 potential fraud, conducting the business of insurance  
13 without a license, or evidencing a potential pattern  
14 of unfair trade practice in violation of article 13;  
15 or

16 (4) Patterns of violations of this chapter and the rules  
17 adopted thereunder regarding rate filings, form  
18 filings, and termination requirements.

19 **§431: -5 Protocols for market conduct actions. (a)**

20 Market conduct actions taken as a result of a market analysis  
21 shall focus on the general business practices and compliance



1 activities of insurers, rather than identifying infrequent or  
2 unintentional random errors that do not cause consumer harm.

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

8 If the commissioner has information that more than one  
9 insurer is engaged in common practices that may violate the law,  
10 the commissioner may schedule and coordinate multiple  
11 examinations simultaneously.

12 (c) The insurer shall be notified of any practice or  
13 procedure which is to be the subject of a market conduct action  
14 and shall be given an opportunity to resolve such matters that  
15 arise as a result of a market analysis to the satisfaction of  
16 the commissioner before any additional market conduct actions  
17 are taken against the insurer. If the insurer has modified the  
18 practice or procedure as a result of a market conduct action  
19 taken by the commissioner of another state, the commissioner  
20 shall accept appropriate documentation that the insurer has  
21 satisfactorily modified the practice or procedure and made



1 similar modification to such practice or procedure in this  
2 state.

3 **§431: -6 Protocols for targeted market conduct**

4 **examinations.** (a) When market analysis identifies a pattern of  
5 conduct or practice by an insurer which requires further  
6 investigation, and less intrusive market conduct actions  
7 identified in section 431: -4(b) are not appropriate, the  
8 commissioner has the discretion to conduct targeted, market  
9 conduct examinations in accordance with procedures that are  
10 substantially similar to the National Association of Insurance  
11 Commissioners' guidelines on market conduct examination  
12 procedures.

13 (b) If the insurer to be examined is not a domestic  
14 insurer, the commissioner shall communicate with and may  
15 coordinate the examination with the insurance commissioner of  
16 the state in which the insurer is organized.

17 (c) Concomitant with the notification requirements  
18 established in subsection (f), the commissioner shall post  
19 notification on the National Association of Insurance  
20 Commissioners' Examination Tracking System, or comparable  
21 product as determined by the commissioner, that a market conduct  
22 examination has been scheduled.



1 (d) The commissioner may not conduct a comprehensive  
2 market conduct examination more frequently than once every three  
3 years. The commissioner may waive conducting a comprehensive  
4 market conduct examination based on market analysis.

5 (e) Prior to commencement of a targeted on-site market  
6 conduct examination, market conduct surveillance personnel shall  
7 prepare a work plan and proposed budget. The proposed budget,  
8 which shall be reasonable for the scope of the examination, and  
9 work plan, shall be provided to the company under examination.  
10 Market conduct examinations, to the extent feasible, shall use  
11 desk examinations and data requests prior to a targeted on-site  
12 examination.

13 Market conduct examinations shall be conducted in  
14 accordance with procedures that are substantially similar to the  
15 National Association of Insurance Commissioners' guidelines on  
16 market conduct examination procedures.

17 Prior to the conclusion of a market conduct examination,  
18 the individual among the market conduct surveillance personnel  
19 who is designated as the examiner-in-charge shall schedule an  
20 exit conference with the insurer.

21 (f) Announcement of the examination shall be sent to the  
22 insurer and posted on the National Association of Insurance



1 Commissioners' Examination Tracking System or comparable  
2 product, as determined by the commissioner, as soon as possible  
3 but in no case later than sixty days before the estimated  
4 commencement of the examination. The announcement shall  
5 contain:

- 6 (1) The name and address of the insurer being examined;
- 7 (2) The name and contact information of the examiner-in-  
8 charge;
- 9 (3) The reason for and the scope of the targeted  
10 examination;
- 11 (4) The date the examination is scheduled to begin;
- 12 (5) Identification of any non-insurance department  
13 personnel who will assist in the examination, if known  
14 at the time the notice is prepared;
- 15 (6) A time estimate for the examination;
- 16 (7) A budget and work plan for the examination and  
17 identification of reasonable and necessary costs and  
18 fees that will be included in the bill, if the cost of  
19 the examination is billed to the company; and
- 20 (8) A request for the insurer to name its examination  
21 coordinator.



1 (g) If a targeted examination is expanded beyond the  
2 reasons provided to the insurer in the notice of the examination  
3 required under this section, the commissioner shall provide  
4 written notice to the insurer, explaining the extent of the  
5 expansion and the reasons for the expansion. The department  
6 shall provide a revised work plan to the insurer before the  
7 beginning of any significantly expanded examination, unless  
8 extraordinary circumstances indicating a risk to consumers  
9 require immediate action.

10 (h) The commissioner shall conduct a pre-examination  
11 conference with the insurer examination coordinator and key  
12 personnel to clarify expectations thirty days prior to  
13 commencement of the examination.

14 (i) The department shall use the National Association of  
15 Insurance Commissioners' Standard Data Request or comparable  
16 product.

17 A company responding to a commissioner's request to produce  
18 information shall produce it as it is kept in the usual course  
19 of business or shall organize and label it to correspond with  
20 the categories in the demand.

21 If a commissioner's request does not specify the form or  
22 forms for producing electronically stored information, a company





1 responding to the request shall produce the information in a  
2 form or forms in which the company ordinarily maintains it or in  
3 a form or forms that are reasonably usable.

4 A company responding to an information request need not  
5 produce the same electronically stored information in more than  
6 one form.

7 A company responding to an information request need not  
8 provide the electronically stored information from sources that  
9 the company identifies as not reasonably accessible because of  
10 undue burden or cost.

11 (j) The commissioner shall adhere to the following  
12 timeline, unless a mutual agreement is reached with the insurer  
13 to modify the timeline:

14 (1) The commissioner shall deliver the draft report to the  
15 insurer within sixty days of the completion of the  
16 examination. Completion of the examination shall be  
17 defined as the date the commissioner confirms in  
18 writing that the examination is completed;

19 (2) The insurer shall respond with written comments within  
20 thirty days of receipt of the draft report;

21 (3) The insurance division shall make a good faith effort  
22 to resolve issues and prepare a final report within



1 thirty days of receipt of the insurer's written  
2 comments, unless a mutual agreement is reached to  
3 extend the deadline. The commissioner may make  
4 corrections and other changes, as appropriate; and  
5 (4) The insurer, within thirty days, shall accept the  
6 final report, accept the findings of the report, file  
7 written comments, or request a hearing. An additional  
8 thirty days shall be allowed if agreed to by the  
9 commissioner and the insurer. Any such hearing  
10 request shall be made in writing and shall follow  
11 chapter 91.

12 The final written and electronic market conduct report  
13 shall include the insurer's written response and any agreed-to  
14 corrections or changes. The response may be included either as  
15 an appendix or in the text of the examination report. The  
16 company shall not be obligated to submit a response. References  
17 to specific individuals by name shall be limited to an  
18 acknowledgement of their involvement in the conduct of the  
19 examination.

20 (k) Upon adoption of the examination report pursuant to  
21 subsection (j), the commissioner shall continue to hold the  
22 content of the examination report as private and confidential



1 for a period of thirty days, except as provided in this  
2 subsection. During this time, the report shall not be subject  
3 to subpoena and shall not be subject to discovery or admissible  
4 in evidence in any private action; provided no court of  
5 competent jurisdiction has ordered production. Thereafter, the  
6 commissioner shall open the report for public inspection;  
7 provided no court of competent jurisdiction has stayed its  
8 publication. This section shall not be construed to limit the  
9 commissioner's authority to use any final or preliminary market  
10 conduct examination report, and examiner or company work papers  
11 or other documents, or any other information discovered or  
12 developed during the course of an examination in the furtherance  
13 of any legal or regulatory action that the commissioner, in the  
14 commissioner's sole discretion, may deem appropriate.

15 Nothing contained in this article shall prevent or be  
16 construed as preventing the commissioner from disclosing the  
17 content of an examination report, preliminary examination report  
18 or results, or any matter relating thereto, to the insurance  
19 division of this or any other state or agency of the federal  
20 government at any time; provided the agency or office receiving  
21 the report or matters relating thereto agrees to hold it  
22 confidential and in a manner consistent with this article.



1 (1) Where the reasonable and necessary cost and fees of a  
2 market conduct examination are to be assessed against the  
3 insurer under examination, the costs and fees shall be  
4 consistent with that otherwise authorized by law. Costs and  
5 fees shall be itemized and bills shall be provided to the  
6 insurer on a monthly basis for review prior to submission for  
7 payment.

8 The commissioner shall maintain active management and  
9 oversight of examination costs and fees, including costs and  
10 fees associated with the use of insurance division personnel and  
11 examiners and with retaining qualified contract examiners  
12 necessary to perform an examination. To the extent the  
13 commissioner retains outside assistance, the commissioner shall  
14 have written protocols that:

- 15 (1) Clearly identify the types of functions subject to  
16 outsourcing;
- 17 (2) Provide specific timelines for completion of the  
18 outsourced review;
- 19 (3) Require disclosure of contract examiners'  
20 recommendations;



1 (4) Establish and use a dispute resolution or arbitration  
2 mechanism to resolve conflicts with insurers regarding  
3 examination costs and fees; and

4 (5) Require disclosure of the terms of the contracts with  
5 the outside consultants that will be used,  
6 specifically the costs and fees or hourly rates, or  
7 both, that can be charged.

8 The commissioner shall review and affirmatively endorse  
9 detailed billings from the qualified contract examiner before  
10 the detailed billings are sent to the insurer.

11 The commissioner may contract in accordance with applicable  
12 state contracting procedures, for qualified contract actuaries  
13 and examiners as the commissioner deems necessary; provided that  
14 the compensation and per diem allowances paid to the contract  
15 persons shall not exceed one hundred twenty-five per cent of the  
16 compensation and per diem allowances for examiners set forth in  
17 the guidelines adopted by the National Association of Insurance  
18 Commissioners, unless the commissioner demonstrates that one  
19 hundred twenty-five per cent is inadequate under the  
20 circumstances of the examination.

21 **§431: -7 Confidentiality requirements.** (a) Except as  
22 otherwise provided by law, market conduct surveillance personnel



1 shall have free and full access to all books and records,  
2 employees, officers and directors, as practicable, of the  
3 insurer during regular business hours. An insurer using a  
4 third-party model or product for any of the activities under  
5 examination shall cause, upon the request of market conduct  
6 surveillance personnel, the details of those models or products  
7 to be made available to those personnel. All documents, whether  
8 from a third party or an insurer, including but not limited to  
9 working papers, third party models or products, complaint logs,  
10 and copies thereof, created, produced, or obtained by or  
11 disclosed to the commissioner or any other person in the course  
12 of any market conduct actions made pursuant to this article, or  
13 in the course of market analysis by the commissioner of the  
14 market conditions of an insurer, or obtained by the National  
15 Association of Insurance Commissioners as a result of any of the  
16 provisions of this article, shall be confidential by law and  
17 privileged, shall not be subject to subpoena and shall not be  
18 subject to discovery or admissible in evidence in any private  
19 civil action.

20 (b) No waiver of any applicable privilege or claim of  
21 confidentiality in the documents, materials, or information



1 shall occur as a result of disclosure to the commissioner under  
2 this section.

3 (c) Market conduct surveillance personnel shall be vested  
4 with the power to issue subpoenas and examine insurance company  
5 personnel under oath when such action is ordered by the  
6 commissioner.

7 (d) Notwithstanding any other law to the contrary, the  
8 commissioner may:

9 (1) Share documents, materials, or other information,  
10 including confidential and privileged documents,  
11 materials, or information subject to subsection (a),  
12 with other state, federal, and international  
13 regulatory agencies, law enforcement authorities, and  
14 the National Association of Insurance Commissioners  
15 and its affiliates and subsidiaries; provided that the  
16 recipient agrees to and has the legal authority to  
17 maintain the confidentiality and privileged status of  
18 the document, material, communication, or other  
19 information;

20 (2) Receive documents, materials, communications, or  
21 information, including otherwise confidential and  
22 privileged documents, materials, or information, from



1 the National Association of Insurance Commissioners  
2 and its affiliates or subsidiaries, and from  
3 regulatory and law enforcement officials of other  
4 foreign or domestic jurisdictions, and shall maintain  
5 as confidential or privileged any document, material,  
6 or information received with notice or the  
7 understanding that it is confidential or privileged  
8 under the laws of the jurisdiction that is the source  
9 of the document, material, or information; and

10 (3) Enter into agreements governing the sharing and use of  
11 information consistent with this subsection.

12 (e) No insurer shall be compelled to disclose an insurance  
13 compliance self-evaluative audit document or waive any statutory  
14 or common law privilege, but may voluntarily disclose such  
15 document to the commissioner in response to any market analysis,  
16 market conduct action, or examination as provided in this  
17 article.

18 **§431: -8 Market conduct surveillance personnel. (a)**

19 Market conduct surveillance personnel shall be qualified by  
20 education, experience, and, where applicable, professional  
21 designations. The commissioner may supplement the in-house  
22 market conduct surveillance staff with qualified outside





1 professional assistance if the commissioner determines that  
2 assistance is necessary.

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

- 10 (1) A policyholder or claimant under an insurance policy;  
11 (2) A grantee of a mortgage or similar instrument on the  
12 individual's residence from a regulated entity if done  
13 under customary terms and in the ordinary course of  
14 business;  
15 (3) An investment owner in shares of regulated diversified  
16 investment companies; or  
17 (4) A settlor or beneficiary of a "blind trust" into which  
18 any otherwise permissible holdings have been placed.

19 **§431: -9 Immunity for market conduct surveillance**  
20 **personnel.** (a) No cause of action shall arise nor shall any  
21 liability be imposed against the commissioner, the  
22 commissioner's authorized representatives, or an examiner



1 appointed by the commissioner for any statements made or conduct  
2 performed in good faith while carrying out the provisions of  
3 this article.

4 (b) No cause of action shall arise, nor shall any  
5 liability be imposed against any person for the act of  
6 communicating or delivering information or data to the  
7 commissioner, the commissioner's authorized representative, or  
8 the examiner pursuant to an examination made under this article,  
9 if the act of communication or delivery was performed in good  
10 faith and without fraudulent intent or the intent to deceive.

11 (c) A person identified in subsection (a) shall be  
12 entitled to an award of attorney's fees and costs if the person  
13 is the prevailing party in a civil cause of action for libel,  
14 slander, or any other relevant tort arising out of activities in  
15 carrying out the provisions of this article and the party  
16 bringing the action was not substantially justified in doing so.  
17 For the purposes of this section, a proceeding is "substantially  
18 justified" if it had a reasonable basis in law or fact at the  
19 time that it was initiated.

20 (d) This section shall not abrogate or modify in any way  
21 any common law or statutory privilege or immunity heretofore  
22 enjoyed by any person identified in subsection (a).



1           **§431: -10 Fines and penalties.** (a) Fines and penalties  
2 levied pursuant to this article or other provisions of this  
3 chapter shall be consistent, reasonable, and justified.

4           (b) The commissioner shall take into consideration actions  
5 taken by insurers that maintain membership in best-practice  
6 organizations that exist to promote high ethical standards of  
7 conduct in the marketplace, and insurers that self assess, self-  
8 report, and remediate problems detected to mitigate fines levied  
9 pursuant to this article.

10           **§431: -11 Data collection and participation in national**  
11 **market conduct databases.** (a) The commissioner shall collect  
12 and report market data to the market information systems of the  
13 National Association of Insurance Commissioners, including the  
14 complaint database system, the examination tracking system, and  
15 the regulatory information retrieval system, or other comparable  
16 successor products as determined by the commissioner. In  
17 addition to complaint data, the accuracy of insurer-specific  
18 information reported to the National Association of Insurance  
19 Commissioners to be used for market analysis purposes or as the  
20 basis for market conduct actions shall be reviewed by  
21 appropriate personnel in the insurance department and by the  
22 insurer.



1           (b) Information collected and maintained by the insurance  
2 division shall be compiled in a manner that meets the  
3 requirements of the National Association of Insurance  
4 Commissioners.

5           (c) After completion of any level of market analysis,  
6 prior to further market conduct action, the State shall contact  
7 the insurer to review the analysis.

8           (d) A company responding to a commissioner's request to  
9 produce information shall produce it as it is kept in the usual  
10 course of business or shall organize and label it to correspond  
11 with the categories in the demand.

12           If a commissioner's request does not specify the form or  
13 forms for producing electronically stored information, a company  
14 responding to the request shall produce the information in a  
15 form or forms in which the company ordinarily maintains it or in  
16 a form or forms that are reasonably usable.

17           A company responding to an information request need not  
18 produce the same electronically stored information in more than  
19 one form.

20           A company responding to an information request need not  
21 provide the electronically stored information from sources that



1 the company identifies as not reasonably accessible because of  
2 undue burden or cost.

3       **§431: -12 Coordination with other states through the**  
4 **National Association of Insurance Commissioners.** The  
5 commissioner shall share information and coordinate the  
6 insurance division's market analysis and examination efforts  
7 with other states through the National Association of Insurance  
8 Commissioners.

9       **§431: -13 Additional duties of the commissioner.** (a)  
10 At least once per year, or more frequently if deemed necessary,  
11 the commissioner shall make available in an appropriate manner  
12 to insurers and other entities subject to the scope of this  
13 chapter, information on new laws and rules, enforcement actions,  
14 and other information the commissioner deems pertinent to ensure  
15 compliance with market conduct requirements.

16       (b) The commissioner shall designate a specific person or  
17 persons within the insurance division whose responsibilities  
18 shall include the receipt of information from employees of  
19 insurers and licensed entities concerning violations of laws, as  
20 defined in this section. The person or persons shall be  
21 provided with proper training on the handling of the



1 information, which shall be deemed a confidential communication  
2 for the purposes of this section.

3 (c) For any change made to a work product referenced in  
4 this article, which materially changes the way in which market  
5 analysis, market conduct actions, or market conduct examinations  
6 are conducted, the commissioner shall give notice and provide  
7 parties with an opportunity for a public hearing pursuant to  
8 chapter 91."

9 SECTION 2. Section 432:1-102, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11 "(b) Article 2 [~~and~~], article 13, and article \_\_\_\_\_ of  
12 chapter 431, and the powers there granted to the commissioner,  
13 shall apply to managed care plans, health maintenance  
14 organizations, or medical indemnity or hospital service  
15 associations, which are owned or controlled by mutual benefit  
16 societies, so long as such application in any particular case is  
17 in compliance with and is not preempted by applicable federal  
18 statutes and regulations."

19 SECTION 3. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect on July 1, 2007.



**Report Title:**

Insurance; Market Conduct

**Description:**

Enacts the National Conference of Insurance Legislators market conduct surveillance model law, which establishes a framework for the insurance commissioner to conduct market conduct examinations of domestic and foreign insurers. (HB90 HD1)

