

Amend CSSB 14 (House Committee Printing) as follows:

(1) In SECTION 1 of the bill, in added Subsection (b-1), Article 5.144, Insurance Code (page 2, lines 10-12), strike "holiday, and the interest accrues beginning on the date on which the commissioner enters the order and continues" and substitute "holiday. The period for the refund and interest begins on the date on which the commissioner enters the order, and interest continues".

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. Article 5.171, Insurance Code, is amended to read as follows:

Art. 5.171. RATING TERRITORIES. Notwithstanding any other provision of this code, an insurer, in writing residential property or personal automobile insurance, may not use rating territories that subdivide a county unless:

(1) the county is subdivided; and

(2) the rate for any subdivisions within that county is not greater than 15 percent higher than the rate used in any other subdivisions in the county by that insurer, except that the commissioner may by rule allow a greater rate difference [~~for residential property insurance or personal automobile insurance~~].

SECTION __. Article 5.171, Insurance Code, as amended by this Act applies only to the rates applicable to insurance policies that are delivered, issued for delivery, or renewed on or after January 1, 2006. Rates applicable to policies that are delivered, issued for delivery, or renewed before January 1, 2006, are governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

SECTION __. Section 202.052(a), Insurance Code, is amended to read as follows:

(a) The commissioner by rule [~~department~~] shall adopt [~~impose~~] and the comptroller shall collect fees for the use of the state from each authorized insurer writing a class of insurance that may be written by an insurer operating under Chapter 841. The commissioner may adopt different valuation fees for valuation of

individual life insurance policies and group life insurance policies. The amount of the fees adopted may not exceed:

(1) for valuing life insurance policies, and for each \$1 million of insurance or fraction thereof . . . \$10; and

(2) for filing the annual statement . . . \$500.

SECTION _____. The change in law made by this Act in amending Section 202.052(a), Insurance Code, applies only to a fee, payment of which is originally due on or after January 1, 2006. A fee, payment of which is originally due before January 1, 2006, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION _____. Title 5, Insurance Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. REGULATION OF INSURER MARKET CONDUCT

CHAPTER 751. MARKET CONDUCT SURVEILLANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE. This chapter may be cited as the Insurance Market Conduct Surveillance Act.

Sec. 751.002. PURPOSE AND SCOPE. (a) The purpose of this chapter is to establish a framework for department market conduct actions, including:

(1) processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;

(2) development of appropriate market conduct actions by the commissioner as required to:

(A) substantiate market conduct problems; and

(B) remedy significant market conduct problems;

and

(3) procedures to communicate and coordinate market conduct actions with other states to foster the most efficient and effective use of resources.

(b) Notwithstanding any other law of this state, the department or commissioner, as applicable, may undertake market analysis or market conduct action only as provided by this chapter.

Sec. 751.003. DEFINITIONS. (a) In this chapter:

(1) "Complaint" means a written or documented oral

communication, the primary intent of which is to express a grievance or an expression of dissatisfaction.

(2) "Desk examination" means a targeted examination conducted by an examiner at a location other than an insurer's premises. The term includes an examination performed at the department's offices during which the insurer provides requested documents for department review by hard copy or by microfiche, disk, or other electronic media.

(3) "Market analysis" means a process under which market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources as necessary to:

(A) develop a baseline understanding of the marketplace; and

(B) identify insurer patterns or practices that:

(i) deviate significantly from the norm; or

(ii) pose a potential risk to the insurance consumer.

(4) "Market analysis handbook" means the outline of the elements and objectives of market analysis as developed and adopted by the National Association of Insurance Commissioners, and used to establish a uniform process by which states may establish and implement market analysis programs.

(5) "Market conduct action" means any activity that the commissioner may initiate to assess and address insurer market practices before conducting a targeted examination. The term does not include a commissioner action taken to resolve:

(A) an individual consumer complaint; or

(B) another report relating to a specific instance of insurer misconduct.

(6) "Market conduct examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

(7) "Market conduct examiner's handbook" means the set

of guidelines, developed and adopted by the National Association of Insurance Commissioners, that document established practices to be used by market conduct surveillance personnel in developing and executing an examination under this chapter.

(8) "Market conduct surveillance personnel" means those individuals employed by or under contract with the department who collect, analyze, review, or act on information regarding insurer patterns or practices.

(9) "Market conduct uniform examination procedures" means the set of guidelines developed and adopted by the National Association of Insurance Commissioners designed to be used by market conduct surveillance personnel in conducting an examination under this chapter.

(10) "On-site examination" means a targeted examination that is conducted at:

(A) the insurer's home office; or

(B) another location at which the records under review are stored.

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

(12) "Standard data request" means the set of field names and descriptions developed and adopted by the National Association of Insurance Commissioners for use by market conduct surveillance personnel in an examination.

(13) "Targeted examination" means a limited review and analysis, conducted through a desk examination or an on-site examination and in accordance with the market conduct uniform examination procedures, of specific insurer conduct, practices, or risks identified through market analysis that have not been remedied by the insurer, including:

(A) underwriting and rating;

(B) marketing and sales;

(C) complaint handling operations and management;

(D) advertising materials;

- (E) licensing;
- (F) policyholder services;
- (G) claims handling;
- (H) policy forms and filings; or
- (I) tier classification.

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

(b) In this chapter, "affiliate" and "subsidiary" have the meanings described by Section 823.003.

Sec. 751.004. IMMUNITY. (a) A cause of action does not arise, and liability may not be imposed, for any statements made or conduct performed in good faith while implementing this chapter, against:

- (1) the commissioner;
- (2) an authorized representative of the commissioner;

or

- (3) an examiner appointed by the commissioner.

(b) A cause of action does not arise, and liability may not be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner under an examination made under this chapter, 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) is entitled to attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities conducted in implementing this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this subsection, an action is "substantially justified" if the action had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify any common law or statutory privilege or immunity.

[Sections 751.005-751.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSIONER

Sec. 751.051. PARTICIPATION IN NATIONAL MARKET CONDUCT DATABASES. (a) The commissioner shall collect and report market data to the National Association of Insurance Commissioner's market information systems, including the complaint database system, the examination tracking system, the regulatory information retrieval system, or other successor systems of that association, as determined by the commissioner.

(b) Information collected and maintained by the department shall be compiled in a manner that meets the requirements of the National Association of Insurance Commissioners.

Sec. 751.052. COORDINATION WITH OTHER STATES. The commissioner shall coordinate the department's market analysis and examination efforts with other states through the National Association of Insurance Commissioners.

Sec. 751.053. INFORMATION FROM COMMISSIONER. (a) At least once annually or more frequently if determined necessary by the commissioner, the commissioner shall provide in an appropriate manner to insurers and other entities subject to this code information regarding new laws and rules, enforcement actions, and other information the commissioner considers relevant to ensure compliance with market conduct requirements.

(b) The commissioner may provide the notice required under Subsection (a) in an electronic format that is designed to give insurers and other entities adequate notice.

(c) Failure by the commissioner to provide the information described by Subsection (a) does not constitute a defense for an insurer who fails to comply with an insurance law of this state.

Sec. 751.054. REPORT OF VIOLATIONS. (a) The commissioner shall designate an individual within the department whose responsibilities shall include the receipt of information from employees of insurers and other entities regulated by the department regarding violations of laws or rules by their employers. The commissioner's designee shall be properly trained in the handling of that information.

(b) Information received under this section is a confidential communication and is not public information.

Sec. 751.055. EXERCISE OF SUBPOENA AUTHORITY. The commissioner has the subpoena power authorized by Subchapter C, Chapter 36, for the production of documents under this chapter and enforcement of this subtitle.

[Sections 751.056-751.100 reserved for expansion]

SUBCHAPTER C. RELATIONS WITH OTHER STATES

Sec. 751.101. COMMISSIONER AUTHORITY; INTERACTIONS WITH OTHER INSURANCE COMMISSIONERS OF OTHER STATES. (a) The commissioner has responsibility for conducting market conduct examinations on domestic insurers. The commissioner may delegate that responsibility to the insurance commissioner of another state, if that insurance commissioner agrees to accept the delegated responsibility. If the commissioner elects to delegate responsibility for examining an insurer, the commissioner shall accept a report of the examination prepared by the insurance commissioner to whom the responsibility has been delegated.

(b) If the insurer to be examined is part of an insurance holding company system, the commissioner may also seek to simultaneously examine any affiliate of the insurer that is authorized to write the same types of insurance in this state as the insurer if the insurance commissioner of the state in which the affiliate is organized consents and delegates responsibility for that examination.

(c) In lieu of conducting a targeted examination of an insurer that holds a certificate of authority in this state but is not a domestic insurer, the commissioner shall accept a report of a market conduct examination regarding that insurer prepared by the insurance commissioner of the state in which the insurer is organized or by another state if:

(1) the laws of the examining state that are applicable to the subject of the examination are substantially similar to those of this state; and

(2) the examining state has a market conduct surveillance system that the commissioner deems comparable to the market conduct surveillance system required under this chapter.

(d) The commissioner's determination under Subsection (c)(2) is discretionary with the commissioner and is not subject to

appeal.

(e) If a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall accept documentation that the insurer has made a similar modification in this state in lieu of initiating a market conduct action or examination related to that practice or procedure. The commissioner may require other or additional practice or procedure modifications.

[Sections 751.102-751.150 reserved for expansion]

SUBCHAPTER D. MARKET ANALYSIS PROCEDURES

Sec. 751.151. COLLECTION OF INFORMATION; COMMISSIONER ANALYSIS. (a) Subject to Subsection (d), the commissioner shall gather insurance market information from:

(1) data available to the department, including survey results and information required to be reported to the department;

(2) information collected by the National Association of Insurance Commissioners and other public and private sources; and

(3) information from within and outside the insurance industry.

(b) The commissioner shall analyze the information compiled under Subsection (a) as necessary to:

(1) develop a baseline understanding of the insurance marketplace; and

(2) identify for further review insurers or insurance practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer.

(c) The commissioner shall use the market analysis handbook as a resource in performing the analysis required under this section.

(d) Except as otherwise specifically provided, the department or the commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.

Sec. 751.152. ADDITIONAL ANALYSIS OF MARKET ACTIONS. (a) If, as a result of the market analysis, the commissioner determines

that further inquiry into a particular insurer or insurance practice is needed, the commissioner shall consider taking one or more of the market conduct actions described by Subsection (b) before conducting a targeted examination. If a market conduct action selected by the commissioner requires the participation of or a response by the affected insurer, the commissioner shall notify the insurer of the action selected in writing.

(b) Market conduct actions described by Subsection (a) may include:

- (1) correspondence with the insurer;
- (2) insurer interviews;
- (3) information gathering;
- (4) policy and procedure reviews;
- (5) interrogatories; and
- (6) review of insurer self-evaluation and compliance programs, including insurer membership in a best-practice organization.

(c) The commissioner shall select market conduct actions that are efficient and cost-effective for the department and the insurer while protecting the interests of the insurance consumer.

(d) The commissioner shall take steps reasonably necessary to:

- (1) eliminate requests for information that duplicates or conflicts with information provided as part of an insurer's annual financial statement, the annual market conduct statement of the National Association of Insurance Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the commissioner, or with data requests made by other states if that information is available to the commissioner, unless the information is state specific; and

- (2) coordinate the market conduct actions and findings of this state with those of other states.

Sec. 751.153. PROTOCOLS FOR MARKET CONDUCT ACTIONS. (a) Each market conduct action taken as a result of a market analysis:

- (1) must focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random errors that do not cause

significant consumer harm; and

(2) may not result in a market conduct examination, unless the head of the insurance regulatory agency in the insurer's state of domicile determines that a market conduct examination is needed.

(b) The commissioner may determine the frequency and timing of the market conduct actions. The timing of an action depends on the specific market conduct action to be initiated unless extraordinary circumstances indicating a risk to consumers require immediate action.

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

(d) The commissioner shall provide an insurer with an opportunity to resolve to the satisfaction of the commissioner any matter that arises as a result of a market analysis before any additional market conduct actions are taken against the insurer. If the insurer has modified a practice or procedure as a result of a market conduct action taken or examination conducted by the insurance commissioner of another state, and the commissioner deems that state's market conduct surveillance system comparable to the system required under this chapter, the commissioner may accept the modified practice or procedure and may require other or additional practice or procedure modifications.

(e) For an application by the department of a handbook, guideline, or other product referenced in this chapter that is the work product of the National Association of Insurance Commissioners that changes the way in which market conduct actions are conducted, the commissioner shall give notice and provide interested parties with an opportunity for a public hearing as provided by Chapter 2001, Government Code, if the change:

(1) necessitates a change in a statute or rule; or

(2) deviates from the applicable handbook, guideline, or other product most recently adopted by the National Association of Insurance Commissioners.

(f) Except as otherwise provided by law, each insurer or

person from whom information is sought, and each officer, director, or agent of that insurer or person, shall provide the commissioner with convenient and free access to all books, records, accounts, papers, documents and any computer or other recordings relating to the property, assets, business and affairs of the insurer or person.

(g) Each officer, director, employee, insurance producer, and agent of an insurer or person described by Subsection (f) shall, to the extent of that individual's ability, facilitate and aid in a department market conduct action.

[Sections 751.154-751.200 reserved for expansion]

SUBCHAPTER E. EXAMINATIONS

Sec. 751.201. EXAMINATION. (a) If the commissioner determines that a market conduct action described by Section 751.152(b) is not appropriate, the commissioner may conduct a targeted examination in accordance with the market conduct uniform examination procedures and the market conduct examiners handbook.

(b) A targeted examination may be conducted through a desk examination or an on-site examination. To the extent feasible, the department shall conduct a market conduct examination through desk examinations and data requests before conducting an on-site examination.

(c) The department shall conduct an examination in accordance with the market conduct examiners handbook and the market conduct uniform examinations procedures.

(d) The department shall use the standard data request or a successor product that is substantially similar to the standard data request as adopted by the commissioner by rule.

(e) If the insurer to be examined is not a domestic insurer, the commissioner shall coordinate the examination with the insurance commissioner of the state in which the insurer is organized.

Sec. 751.202. WORK PLAN. Before beginning an examination, market conduct surveillance personnel shall prepare a work plan that includes:

- (1) the name and address of the insurer to be examined;
- (2) the name and contact information of the

examiner-in-charge;

(3) a statement of the reasons for the examination;

(4) a description of the scope of the examination;

(5) the date the examination is scheduled to begin;

(6) notice to any non-insurance department personnel who will assist in the examination;

(7) a time estimate for the examination; and

(8) if the cost of the examination is billed to the affected insurer:

(A) a budget for the examination; and

(B) an identification of factors that will be included in the billing.

Sec. 751.203. NOTICE OF EXAMINATION. (a) Unless the examination is conducted in response to extraordinary circumstances as described by Section 751.153(b), the department shall notify an affected insurer of an examination not later than the 60th day before the scheduled date of the beginning of the examination. The notice must include the examination work plan and a request that the insurer name an examination coordinator for the insurer.

(b) In addition to the notice required under Subsection (a), the commissioner shall post notice that a market conduct examination has been scheduled on the National Association of Insurance Commissioners examination tracking system.

(c) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under Subsection (a), the commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

Sec. 751.204. PRE-EXAMINATION CONFERENCE. Not later than the 30th day before the scheduled date of the examination, the commissioner shall conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations.

Sec. 751.205. EXIT CONFERENCE. Before the conclusion of an

examination, the member of the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.

Sec. 751.206. EXAMINATION REPORT. (a) Unless the commissioner and the insurer agree to a different schedule, the commissioner shall follow the time line established under this section.

(b) The commissioner shall deliver the draft examination report to the insurer not later than the 60th day after the date the examination is completed. For purposes of this section, the date the examination is completed is the date on which the exit conference is conducted.

(c) Not later than the 30th day after the date on which the insurer receives the draft examination report, the insurer shall provide any written comments regarding the report to the department.

(d) The department shall make a good faith effort to resolve issues with the insurer informally and shall prepare a final examination report not later than the 30th day after the date of receipt of the insurer's written comments on the draft report unless a mutual agreement is reached to extend the deadline.

(e) The department shall include the insurer's responses in the final examination report. The responses may be included as an appendix or in the text of the examination report. An insurer is not obligated to submit a response. An individual involved in the examination may not be named in either the report or the insurer response except to acknowledge the individual's involvement.

(f) The commissioner may make corrections and other changes to the final examination report as appropriate, and shall issue the report to the insurer. Not later than the 30th day after receipt of the final examination report under this subsection, the insurer shall accept the report, accept the findings of the report, or request a hearing. The commissioner and the insurer by mutual agreement may extend the period for an additional 30 days. A request for a hearing must be made in writing and must follow the requirements of Chapter 2001, Government Code.

Sec. 751.207. CONFIDENTIALITY OF EXAMINATION REPORT

INFORMATION. (a) A final or preliminary market conduct examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under Chapter 552, Government Code. This section may not be construed to limit the commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the commissioner, in the commissioner's sole discretion, may deem appropriate.

(b) This chapter does not prevent the commissioner from disclosing at any time the contents of a final market conduct examination report to the department, the insurance department of any other state, or an agency of the federal government, if the department or agency receiving the report agrees in writing to maintain the information as confidential and in a manner consistent with this chapter.

(c) The commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (b) not later than the fifth day after the date the final market conduct examination is released under Subsection (b).

Sec. 751.208. ASSESSMENT OF COSTS OF EXAMINATION. (a) Subject to Subsection (d), if the reasonable and necessary cost of a market conduct examination is to be assessed against the affected insurer, fees for that cost must be consistent with those otherwise authorized by law. The fees must be itemized and bills for the fees must be provided to the insurer on a monthly basis for review prior to submission for payment.

(b) The commissioner shall actively manage and oversee examination costs, including costs associated with the use of department examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the commissioner retains outside assistance, the commissioner shall adopt by rule written protocols that:

(1) clearly identify the types of functions to be subject to outsourcing;

(2) provide specific time lines for completion of the outsourced review;

(3) require disclosure of recommendations made by contract examiners;

(4) establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(5) require disclosure of the terms of contracts entered into with outside consultants, and specifically terms regarding the fees or hourly rates that may be charged by those consultants.

(c) The commissioner must review and affirmatively endorse detailed billings made by a qualified contract examiner before the detailed billings are sent to the insurer.

(d) An insurer may not be required to provide reimbursement for examiner fees under Subsection (a), whether those fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those fees exceed the fees prescribed in the market conduct examiner's handbook and any successor documents to that handbook, unless the commissioner demonstrates that the fees prescribed in the handbook are inadequate under the circumstances of the examination.

Sec. 751.209. LIMIT ON CERTAIN EXAMINATIONS. The commissioner may not conduct a market conduct examination more frequently than once every three years. The commissioner may defer conducting a market conduct examination for longer than once every three years.

[Sections 751.210-751.250 reserved for expansion]

SUBCHAPTER F. CONFIDENTIALITY REQUIREMENTS

Sec. 751.251. NO WAIVER. (a) The disclosure to the commissioner under this subchapter of a document, material, or information does not constitute the waiver of any applicable privilege or claim of confidentiality regarding the document, material, or information.

(b) Notwithstanding Subsection (a), an insurer may not be compelled to disclose a self-audit document or waive any statutory or common law privilege. An insurer may, however, voluntarily

disclose a document described by this subsection to the commissioner in response to any market conduct action or examination.

(c) For the purposes of Subsection (b), "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

Sec. 751.252. AUTHORITY OF COMMISSIONER. (a) The commissioner may share documents, materials, or other information obtained by or disclosed to the commissioner under this chapter with other state, federal and international regulatory agencies and law enforcement authorities if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, or other information.

(b) The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and that association's affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The commissioner shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(c) Consistent with this section, the commissioner may enter into agreements governing the sharing and use of information.

[Sections 751.253-751.300 reserved for expansion]

SUBCHAPTER G. MARKET CONDUCT SURVEILLANCE PERSONNEL

Sec. 751.301. PERSONNEL; QUALIFICATIONS. (a) To conduct market conduct surveillance under this chapter, the commissioner may designate department staff to perform duties under this chapter, and may supplement that staff with qualified outside professional assistance if the commissioner determines that that assistance is necessary.

(b) Market conduct surveillance personnel must be qualified by education and experience and, if applicable, must hold appropriate professional designations.

Sec. 751.302. CONFLICT OF INTEREST. (a) An individual who is a member of the market conduct surveillance personnel has a conflict of interest, either directly or indirectly, if the individual is affiliated with the management of, has been employed by, or owns a pecuniary interest in, an insurer subject to an examination conducted under this chapter.

(b) This section may not be construed to automatically preclude the 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.

Sec. 751.303. ACCESS TO INFORMATION. (a) Except as otherwise provided by law, market conduct surveillance personnel shall, as practicable, have free and full access to all books and records, and all employees, officers, and directors, of the insurer during regular business hours.

(b) On the request of market conduct surveillance personnel, an insurer that uses a third-party model or product for any of the activities under examination shall make the details of those models or products available to that personnel.

Sec. 751.304. AUTHORITY OF MARKET CONDUCT SURVEILLANCE PERSONNEL. Market conduct surveillance personnel may examine insurance company personnel under oath if that action is ordered by the commissioner under Subchapter C, Chapter 36.

[Sections 751.305-751.350 reserved for expansion]

SUBCHAPTER H. SANCTIONS

Sec. 751.351. SANCTIONS. (a) The commissioner may impose sanctions under Chapter 82 against an insurer determined, as a result of a market conduct action or other action under this chapter, to have violated this code, a rule adopted under this code, or another insurance law of this state.

(b) In determining an appropriate sanction under Subsection (a) the commissioner shall consider:

(1) any actions taken by the insurer to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the insurance marketplace; and

(2) the extent to which the insurer maintains regulatory compliance programs to self-assess, self-report, and remediate problems detected by the insurer.

SECTION __. Article 5.43, Insurance Code, is amended by adding Subsections (a-1) and (f) to read as follows:

(a-1) A residential property insurance claim under this article does not include a claim:

(1) resulting from a loss caused by natural causes;

(2) that is filed but is not paid or payable under the policy; or

(3) that an insurer is prohibited from using under Section 3, Article 5.35-4, of this code.

(f) Any change in the amount of a discount provided under this article must comply with the requirements of Section 551.107 of this code.

SECTION __. Section 551.107, Insurance Code, is amended by amending Subsections (b), (c), (e), and (f) and adding Subsection (g) to read as follows:

(b) A claim under this section does not include a claim:

(1) resulting from a loss caused by natural causes;

~~[or]~~

(2) that is filed but is not paid or payable under the policy; or

(3) that an insurer is prohibited from using under Section 3, Article 5.35-4.

(c) An insurer may assess a premium surcharge at the time an insurance policy is renewed if the insured has filed one ~~[two]~~ or more claims in the preceding three policy years ~~[year]~~. ~~[The insurer may assess an additional premium surcharge if an additional claim is made in the following policy year. The department shall set the amount of any surcharge that may be assessed under this~~

~~subsection.] The amount of the surcharge must be based on sound actuarial principles ~~[may not exceed 10 percent of the total premium, including any premium surcharge, actually paid by the insured in the preceding policy year].~~~~

(e) An insurer may notify an insured who has filed two claims in a period of less than three years that the insurer may refuse to renew the policy if the insured files a third claim during the three-year period. If the insurer does not notify the insured in accordance with this subsection, the insurer may not refuse to renew the policy because of claims ~~[losses]~~. The notice form must:

(1) list the policyholder's claims; and

(2) contain the sentence: "The filing by you of another claim, except for a claim resulting from a loss caused by natural causes, a claim filed but not paid or payable under the policy under which it was filed, or an appliance-related claim that we are prohibited from using under Section 3, Article 5.35-4, Texas Insurance Code, ~~[Another non-weather related loss]~~ could cause us to refuse to renew your policy."

(f) In this section, "premium surcharge" means an additional amount that is added to the base rate. The term does not include a reduction or elimination of a discount previously received by an insured, reassignment of an insured from one rating tier to another, re-rating an insured, or re-underwriting an insured by using multiple affiliates ~~[An insurer that renews the insurance policy of an insured who has filed three or more claims under the policy in a three-year period may assess a premium surcharge in an amount set by the department]~~.

(g) The commissioner shall adopt rules as necessary to implement this section.

SECTION _____. The changes in law made by this Act in amending Article 5.43 and Section 551.107, Insurance Code, apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2006. An insurance policy that is delivered, issued for delivery, or renewed before January 1, 2006, is covered by the law in effect at the time the policy was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.