

AN ACT

relating to rates for certain property and casualty insurance and regulation of insurer market conduct.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 5.144, Insurance Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 [~~or 5.101~~] of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount, directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if the amount of that portion of the premium is less than 7.5 percent:

(A) provide each affected policyholder who renews the policy a future premium discount in the amount of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount; and

1 (B) provide each affected policyholder who does  
2 not renew or whose coverage is otherwise terminated a refund in the  
3 amount described by Subdivision (1) of this subsection.

4 (b-1) The rate for interest assessed under Subsection (b) of  
5 this article is the lesser of 18 percent or the sum of six percent  
6 and the prime rate for the calendar year in which the commissioner's  
7 order finding that the rate is excessive or unfairly discriminatory  
8 is issued. For purposes of this subsection, the prime rate is the  
9 prime rate as published in The Wall Street Journal for the first day  
10 of the calendar year that is not a Saturday, Sunday, or legal  
11 holiday. The period for the refund and interest begins on the date  
12 the department first provides the insurer with formal written  
13 notice that the insurer's filed rate is excessive or unfairly  
14 discriminatory, and interest continues to accrue until the refund  
15 is paid. An insurer may not be required to pay any interest penalty  
16 if the insurer prevails in an appeal of the commissioner's order  
17 under Subchapter D, Chapter 36, of this code.

18 (b-2) An insurer may not claim a premium tax credit to which  
19 the insurer is otherwise entitled unless the insurer complies with  
20 Subsection (b) of this article.

21 SECTION 2. Article 5.171, Insurance Code, is amended to  
22 read as follows:

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

27 (1) the county is subdivided; and

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

6           SECTION 3. Title 5, Insurance Code, is amended by adding  
7 Subtitle G to read as follows:

8           SUBTITLE G. REGULATION OF INSURER MARKET CONDUCT

9           CHAPTER 751. MARKET CONDUCT SURVEILLANCE

10           SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

21                   (A) substantiate market conduct problems; and

22                   (B) remedy significant market conduct problems;

23 and

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

27           (b) Notwithstanding any other law of this state, the

1 department or commissioner, as applicable, may undertake market  
2 analysis or market conduct action only as provided by this chapter.

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

4 (1) "Complaint" means a written or documented oral  
5 communication, the primary intent of which is to express a  
6 grievance or an expression of dissatisfaction.

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

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

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

19 (B) identify insurer patterns or practices that:  
20 (i) deviate significantly from the norm; or  
21 (ii) pose a potential risk to the insurance  
22 consumer.

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

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

5                   (A) an individual consumer complaint; or

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

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

14           (7) "Market conduct examiners handbook" means the set  
15 of guidelines, developed and adopted by the National Association of  
16 Insurance Commissioners, that document established practices to be  
17 used by market conduct surveillance personnel in developing and  
18 executing an examination under this chapter.

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

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

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

3                   (A) the insurer's home office; or

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

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

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

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

20                   (A) underwriting and rating;

21                   (B) marketing and sales;

22                   (C) complaint handling operations and  
23 management;

24                   (D) advertising materials;

25                   (E) licensing;

26                   (F) policyholder services;

27                   (G) claims handling;

1                   (H) policy forms and filings; or

2                   (I) tier classification.

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

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

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

13                   (1) the commissioner;

14                   (2) an authorized representative of the commissioner;

15 or

16                   (3) an examiner appointed by the commissioner.

17                   (b) A cause of action does not arise, and liability may not  
18 be imposed, against any person for the act of communicating or  
19 delivering information or data to the commissioner or the  
20 commissioner's authorized representative or examiner under an  
21 examination made under this chapter, if the act of communication or  
22 delivery was performed in good faith and without fraudulent intent  
23 or the intent to deceive.

24                   (c) A person identified in Subsection (a) is entitled to  
25 attorney's fees and costs if the person is the prevailing party in a  
26 civil cause of action for libel, slander, or any other relevant tort  
27 arising out of activities conducted in implementing this chapter,

1 and the party bringing the action was not substantially justified  
2 in doing so. For purposes of this subsection, an action is  
3 "substantially justified" if the action had a reasonable basis in  
4 law or fact at the time that it was initiated.

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

7 [Sections 751.005-751.050 reserved for expansion]

8 SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSIONER

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

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

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

23 Sec. 751.053. INFORMATION FROM COMMISSIONER. (a) At least  
24 once annually or more frequently if determined necessary by the  
25 commissioner, the commissioner shall provide in an appropriate  
26 manner to insurers and other entities subject to this code  
27 information regarding new laws and rules, enforcement actions, and



1 other information the commissioner considers relevant to ensure  
2 compliance with market conduct requirements.

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

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

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

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

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

22 [Sections 751.056-751.100 reserved for expansion]

23 SUBCHAPTER C. RELATIONS WITH OTHER STATES

24 Sec. 751.101. COMMISSIONER AUTHORITY; INTERACTIONS WITH  
25 OTHER INSURANCE COMMISSIONERS OF OTHER STATES. (a) The  
26 commissioner has responsibility for conducting market conduct  
27 examinations on domestic insurers. The commissioner may delegate

1 that responsibility to the insurance commissioner of another state,  
2 if that insurance commissioner agrees to accept the delegated  
3 responsibility. If the commissioner elects to delegate  
4 responsibility for examining an insurer, the commissioner shall  
5 accept a report of the examination prepared by the insurance  
6 commissioner to whom the responsibility has been delegated.

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

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

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

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

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

1 appeal.

2 (e) Subject to a determination under Subsection (c), if a  
3 market conduct examination conducted by another state results in a  
4 finding that an insurer should modify a specific practice or  
5 procedure, the commissioner shall accept documentation that the  
6 insurer has made a similar modification in this state in lieu of  
7 initiating a market conduct action or examination related to that  
8 practice or procedure. The commissioner may require other or  
9 additional practice or procedure modifications.

10 [Sections 751.102-751.150 reserved for expansion]

11 SUBCHAPTER D. MARKET ANALYSIS PROCEDURES

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

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

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

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

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

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

26 (2) identify for further review insurers or insurance  
27 practices that deviate significantly from the norm or that pose a

1 potential risk to the insurance consumer.

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

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

10 Sec. 751.152. ADDITIONAL ANALYSIS OF MARKET ACTIONS.

11 (a) If, as a result of the market analysis, the commissioner  
12 determines that further inquiry into a particular insurer or  
13 insurance practice is needed, the commissioner shall consider  
14 taking one or more of the market conduct actions described by  
15 Subsection (b) before conducting a targeted examination. If a  
16 market conduct action selected by the commissioner requires the  
17 participation of or a response by the affected insurer, the  
18 commissioner shall notify the insurer of the action selected in  
19 writing.

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

- 22 (1) correspondence with the insurer;  
23 (2) insurer interviews;  
24 (3) information gathering;  
25 (4) policy and procedure reviews;  
26 (5) interrogatories; and  
27 (6) review of insurer self-evaluation and compliance

1 programs, including insurer membership in a best-practice  
2 organization.

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

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

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

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

18 Sec. 751.153. PROTOCOLS FOR MARKET CONDUCT ACTIONS.

19 (a) Each market conduct action taken as a result of a market  
20 analysis:

21 (1) must focus on the general business practices and  
22 compliance activities of insurers, rather than identifying  
23 infrequent or unintentional random errors that do not cause  
24 significant consumer harm; and

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

1 needed.

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

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

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

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

1 2001, Government Code, if the change:

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

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

6 (f) Except as otherwise provided by law, each insurer or  
7 person from whom information is sought, and each officer, director,  
8 or agent of that insurer or person, shall provide the commissioner  
9 with convenient and free access to all books, records, accounts,  
10 papers, documents, and any computer or other recordings relating to  
11 the property, assets, business, and affairs of the insurer or  
12 person.

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

17 [Sections 751.154-751.200 reserved for expansion]

18 SUBCHAPTER E. EXAMINATIONS

19 Sec. 751.201. EXAMINATION. (a) If the commissioner  
20 determines that a market conduct action described by Section  
21 751.152(b) is not appropriate, the commissioner may conduct a  
22 targeted examination in accordance with the market conduct uniform  
23 examination procedures and the market conduct examiners handbook.

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

1 examination.

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

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

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

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

15 (1) the name and address of the insurer to be examined;

16 (2) the name and contact information of the  
17 examiner-in-charge;

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

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

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

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

23 (7) a time estimate for the examination; and

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

26 (A) a budget for the examination; and

27 (B) an identification of factors that will be



1 included in the billing.

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

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

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

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

26 Sec. 751.205. EXIT CONFERENCE. Before the conclusion of an  
27 examination, the member of the market conduct surveillance

1 personnel who is designated as the examiner-in-charge shall  
2 schedule an exit conference with the insurer.

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

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

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

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

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

27 (f) The commissioner may make corrections and other changes

1 to the final examination report as appropriate, and shall issue the  
2 report to the insurer. Not later than the 30th day after receipt of  
3 the final examination report under this subsection, the insurer  
4 shall accept the report, accept the findings of the report, or  
5 request a hearing. The commissioner and the insurer by mutual  
6 agreement may extend the period for an additional 30 days. A  
7 request for a hearing must be made in writing and must follow the  
8 requirements of Chapter 2001, Government Code.

9 Sec. 751.207. CONFIDENTIALITY OF EXAMINATION REPORT  
10 INFORMATION. (a) A final or preliminary market conduct  
11 examination report, and any information obtained during the course  
12 of an examination, is confidential and is not subject to disclosure  
13 under Chapter 552, Government Code. This section may not be  
14 construed to limit the commissioner's authority to use any final or  
15 preliminary market conduct examination report, any examiner or  
16 company work papers or other documents, or any other information  
17 discovered or developed during the course of an examination in the  
18 furtherance of any legal or regulatory action that the  
19 commissioner, in the commissioner's sole discretion, may deem  
20 appropriate.

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

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

5       Sec. 751.208. ASSESSMENT OF COSTS OF EXAMINATION.

6       (a) Subject to Subsection (d), if the reasonable and necessary  
7 cost of a market conduct examination is to be assessed against the  
8 affected insurer, fees for that cost must be consistent with those  
9 otherwise authorized by law. The fees must be itemized and bills  
10 for the fees must be provided to the insurer on a monthly basis for  
11 review prior to submission for payment.

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

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

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

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

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

27               (5) require disclosure of the terms of contracts

1 entered into with outside consultants, and specifically terms  
2 regarding the fees or hourly rates that may be charged by those  
3 consultants.

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

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

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

20 [Sections 751.210-751.250 reserved for expansion]

21 SUBCHAPTER F. CONFIDENTIALITY REQUIREMENTS

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

27 (b) Notwithstanding Subsection (a), an insurer may not be

1 compelled to disclose a self-audit document or waive any statutory  
2 or common law privilege. An insurer may, however, voluntarily  
3 disclose a document described by this subsection to the  
4 commissioner in response to any market conduct action or  
5 examination.

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

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

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

27 (c) Consistent with this section, the commissioner may

1 enter into agreements governing the sharing and use of information.

2 [Sections 751.253-751.300 reserved for expansion]

3 SUBCHAPTER G. MARKET CONDUCT SURVEILLANCE PERSONNEL

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

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

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

19 (b) This section may not be construed to automatically  
20 preclude the individual from being:

21 (1) a policyholder or claimant under an insurance  
22 policy;

23 (2) a grantee of a mortgage or similar instrument on  
24 the individual's residence from a regulated entity if done under  
25 customary terms and in the ordinary course of business;

26 (3) an investment owner in shares of regulated  
27 diversified investment companies; or

1           (4) a settlor or beneficiary of a blind trust into  
2 which any otherwise permissible holdings have been placed.

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

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

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

16           [Sections 751.305-751.350 reserved for expansion]

17                           SUBCHAPTER H. SANCTIONS

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

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

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



1 insurance marketplace; and

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

5 SECTION 4. Article 5.43, Insurance Code, is amended by  
6 adding Subsections (a-1) and (f) to read as follows:

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

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

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

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

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

17 SECTION 5. Section 551.107, Insurance Code, is amended by  
18 amending Subsections (b), (c), (e), and (f) and adding Subsection  
19 (g) to read as follows:

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

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

22 [~~or~~]

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

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

27 (c) An insurer may assess a premium surcharge at the time an

1 insurance policy is renewed if the insured has filed one [~~two~~] or  
2 more claims in the preceding three policy years [~~year~~]. [~~The~~  
3 ~~insurer may assess an additional premium surcharge if an additional~~  
4 ~~claim is made in the following policy year. The department shall~~  
5 ~~set the amount of any surcharge that may be assessed under this~~  
6 ~~subsection.~~] The amount of the surcharge must be based on sound  
7 actuarial principles [~~may not exceed 10 percent of the total~~  
8 ~~premium, including any premium surcharge, actually paid by the~~  
9 ~~insured in the preceding policy year~~].

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

16 (1) list the policyholder's claims; and

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

24 (f) In this section, "premium surcharge" means an  
25 additional amount that is added to the base rate. The term does not  
26 include a reduction or elimination of a discount previously  
27 received by an insured, reassignment of an insured from one rating

1 tier to another, re-rating an insured, or re-underwriting an  
2 insured by using multiple affiliates [~~An insurer that renews the~~  
3 ~~insurance policy of an insured who has filed three or more claims~~  
4 ~~under the policy in a three-year period may assess a premium~~  
5 ~~surcharge in an amount set by the department]~~].

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

8 SECTION 6. Subsection (d), Article 5.43, Insurance Code, is  
9 amended to read as follows:

10 (d) This article applies to an insurer that uses a tier  
11 classification or discount program that has a premium consequence  
12 based in whole or in part on claims experience without regard to  
13 whether any of the policies that continuously covered the  
14 policyholder, as described by Subsections (b)(1) and (2) of this  
15 article, was a different type of residential property insurance  
16 policy from the policy eligible for the discount.

17 SECTION 7. The changes in law made by this Act in amending  
18 Section 551.107 and Articles 5.43 and 5.171, Insurance Code, as  
19 amended by this Act, apply only to the rates applicable to insurance  
20 policies that are delivered, issued for delivery, or renewed on or  
21 after January 1, 2006. Rates applicable to policies that are  
22 delivered, issued for delivery, or renewed before January 1, 2006,  
23 are governed by the law as it existed immediately before the  
24 effective date of this Act, and that law is continued in effect for  
25 this purpose.

26 SECTION 8. This Act takes effect September 1, 2005.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 14 passed the Senate on April 21, 2005, by the following vote: Yeas 31, Nays 0; May 27, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2005, House granted request of the Senate; May 29, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 14 passed the House, with amendments, on May 25, 2005, by a non-record vote; May 28, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor