SUBSTITUTE FOR

SENATE BILL NO. 548

A bill to amend 1956 PA 218, entitled

"The insurance code of 1956,"

(MCL 500.100 to 500.8302) by adding chapter 4A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 4A

MARKET CONDUCT EXAMINATIONS

Sec. 481. As used in this chapter:

(a) "Complaint" means a written or oral communication that is documented that primarily expresses a grievance. As used in this subdivision, "grievance" means an expression of dissatisfaction.

(b) "Desk examination" means a targeted examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed at the

department's offices with the insurer providing, for review, requested documents by hard copy, microfiche, discs, or other electronic media.

(c) "Insurer" means that term as defined in section 106 and includes a nonprofit dental care corporation operating under 1963 PA 125, MCL 550.351 to 550.373.

(d) "Market analysis" means a process through which market conduct surveillance personnel collect and analyze pertinent information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify, for further review, patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to insurance consumers. The director shall ensure that the NAIC Market Regulation Handbook is used as 1 resource in performing a market analysis. For purposes of this subdivision, "pertinent information" means information gathered by market conduct surveillance personnel from all of the following:

(*i*) Data currently available to the department.

(*ii*) Surveys and information from required reports.

(*iii*) Information collected by the NAIC and other sources in the public and private sectors.

(*iv*) Information from within and outside the insurance industry.

(e) "Market conduct action" means any activities that the director may initiate to assess and address the market practices of insurers, including, but not limited to, a market analysis and, following a market analysis, the provision of a targeted examination. Market conduct action does not include the director's resolution of an individual consumer complaint or other report of a

specific instance of misconduct.

(f) "Market conduct surveillance personnel" means those individuals employed or contracted by the director to collect, analyze, review, or act on information concerning the insurance marketplace that identifies patterns or practices of insurers.

(g) "NAIC" means the National Association of Insurance Commissioners.

(h) "NAIC Market Conduct Examiner's Handbook" means the set of guidelines developed and adopted by the NAIC that documents established practices to be used by market conduct surveillance personnel in developing and executing an examination, or a successor document.

(i) "NAIC Market Conduct Uniform Examination Procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct surveillance personnel in conducting an examination, or a successor document.

(j) "NAIC Market Regulation Handbook" means the outline of the elements and objectives of market analysis developed and adopted by the NAIC and the process by which states can establish and implement market analysis programs, or a successor document.

(k) "NAIC Standard Data Request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in an examination.

(*l*) "On-site examination" means a targeted examination conducted at the insurer's home office or the location where the records under review are stored.

(m) "Qualified contract examiner" means a person under contract with the director who is qualified by education, experience, and, where applicable, professional designations to

perform market conduct actions.

(n) "Targeted examination" means a focused exam based on the results of a market analysis that indicates a need to review a specific line of business or specific business practices. A targeted examination may be conducted by desk examination or by an on-site examination. As referenced in this subdivision, "specific line of business or specific business practices" includes, but is not limited to, the following:

(*i*) Underwriting and rating.

(*ii*) Marketing and sales.

(*iii*) Complaint handling operations and management.

(*iv*) Advertising materials.

(*v*) Licensing.

(*vi*) Policyholder services.

(*vii*) Nonforfeitures.

(*viii*) Claims handling.

(*ix*) Policy forms and filings.

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

Sec. 482. (1) The director shall, on an ongoing basis, ensure that market analysis is conducted.

(2) Subject to subsection (4), if the director determines, as a result of a market analysis, that further inquiry into a particular insurer or practice is needed, the director may consider the following continuum of market conduct actions before conducting a targeted examination by on-site examination:

(a) Correspondence with the insurer.

(b) Insurer interviews.

(c) Information gathering.

(d) Policy and procedure reviews.

(e) Interrogatories.

(f) Review of insurer self-evaluation and compliance programs. If the director is satisfied that the organization's qualification process is likely to provide reasonable assurance of compliance with pertinent insurance laws, the review under this subdivision may include consideration of the insurer's membership in a best-practices organization.

(g) Desk examinations.

(h) Examinations.

(3) If the director considers a continuum of market conduct actions under subsection (2) and the consideration involves insurer participation or response, the director shall make the action in consideration known to the insurer in writing.

(4) If the director considers a continuum of market conduct actions under subsection (2), the director shall select actions for consideration that yield a consideration that is cost effective for the department and the insurer and that protect insurance consumers.

(5) The director shall take steps reasonably necessary to eliminate duplicative inquiries and shall coordinate market conduct actions and findings with other states.

Sec. 483. (1) Market conduct actions taken as a result of a market analysis 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.

(2) Except as otherwise provided in this subsection, the director may determine the frequency and timing of market conduct actions. However, unless extraordinary circumstances indicate a risk to consumers if immediate action is not taken, the director shall take into account the specific market conduct action in determining timing as described in this subsection.

(3) If the director has information indicating that more than 1 insurer is engaged in common practices that may violate statute or rules, the director may schedule and coordinate multiple market conduct actions simultaneously.

(4) The director may give an insurer reasonable opportunity to resolve, to the satisfaction of the director, matters that arise as a result of a market analysis before additional market conduct actions are taken against the insurer.

(5) The director shall give notice and provide parties with an opportunity for a public hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for any changes made to an NAIC work product referenced in this chapter that changes the way in which market conduct actions are conducted in either of the following circumstances:

(a) A change is made that necessitates a change in statute, regulation, or rule.

(b) The director deviates from the most recently adopted NAIC work product.

(6) Except as otherwise provided by law, every person from whom information is sought for purposes of this chapter and the person's officers, directors, and agents shall provide the director 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 person. An officer, director, employee, insurance producer, and agent of a person shall facilitate market conduct actions and aid in market conduct actions so far as it is in their power to do so.

Sec. 484. (1) If the director determines that the continuum of market conduct actions identified in section 482(2) is not appropriate, the director may conduct a targeted examination by on-site examination in accordance with NAIC Market Conduct Uniform Examination Procedures and the NAIC Market Conduct Examiner's Handbook.

(2) In conjunction with the notification requirements under subsection (8), the director shall post notification on the NAIC Examination Tracking System, or a successor NAIC product, as determined by the director, that a market conduct action has been scheduled.

(3) Instead of market conduct action against an insurer licensed in this state, the director may accept an examination report from another state provided that the state has a market surveillance system the director deems comparable to the market surveillance system set forth under this chapter. The director's determination under this subsection is discretionary and is not subject to appeal.

(4) Before a targeted examination by on-site examination, market conduct surveillance personnel must prepare a work plan consisting of all of the following:

(a) The name and address of the insurer being examined.

(b) The name and contact information of the examiner-in-charge.

(c) The justification for the targeted examination by on-site

examination.

(d) The scope of the targeted examination by on-site examination.

(e) The date the on-site examination is scheduled to begin.

(f) Notice of any non-insurance department personnel who will assist in the examination.

(g) A time estimate for the targeted examination by on-site examination.

(h) A budget for the targeted examination by on-site examination, if the cost of the examination is billed to the insurer.

(i) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer.

(5) Market conduct action must, to the extent feasible, be conducted by desk examination, and data requests must be utilized before a targeted examination by on-site examination is utilized.

(6) Market conduct action must be conducted in accordance with the provisions set forth in the NAIC Market Conduct Examiner's Handbook and the NAIC Market Conduct Uniform Examinations Procedures.

(7) The department shall use the NAIC Standard Data Request or a successor product to request data or information during an on-site examination.

(8) The director shall make an announcement of market conduct action by sending it to the insurer and posting on the NAIC's Examination Tracking System, or a successor product, as determined by the director, as soon as possible, but, except when the action is conducted in response to an extraordinary circumstance described in section 483(2), if a targeted examination is by on-site

examination, by not later than 60 days before the estimated commencement of the targeted examination by on-site examination. The announcement described in this subsection must contain both of the following, as applicable:

(a) An examination work plan.

(b) A request for the insurer to name its examination coordinator.

(9) Not later than 30 days before the commencement of market conduct action, the director shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations.

(10) Before the conclusion of a targeted examination by on-site examination, a person among the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.

(11) Unless a mutual agreement is reached with the insurer to modify the timeline, the director shall adhere to the following timeline:

(a) The director must deliver a draft report to the insurer not later than 60 days after the completion of market conduct action. Completion of the market conduct action is the date the director is considered to confirm, in writing, that the market conduct action is completed.

(b) The insurer must respond with written comments not later than 30 days after receipt of the draft report described in subdivision (a).

(c) Unless a mutual agreement is reached between the director and the insurer to extend the deadline, the department shall make a good-faith effort to resolve issues informally and prepare a final

report not later than 30 days after receipt of the insurer's written comments as described in subdivision (b). The director may make corrections and other changes to the final report as appropriate.

(d) The insurer must, not later than 30 days after issuance of the final report, accept the final report and accept the findings of the report or request a hearing. If agreed on by the director and the insurer, not more than 30 days may be added to the 30-day deadline described in this subsection. A hearing request described in this subdivision must comply with the requirements of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(12) The director shall include the insurer's response described under subsection (11) in the final report described under subsection (11). The insurer's response may be included as an appendix or in the text of the examination report. This chapter does not require an insurer to submit a response. Individuals involved in the examination must not be named in either the report or the response, except to acknowledge their involvement.

(13) Except as otherwise provided in subsection (14), on acceptance of the final report under subsection (11), the director shall continue to hold the content of the report as private and confidential for a period of not less than 30 days. After the 30-day period described in this subsection, unless a court of competent jurisdiction has stayed its publication, the director shall open the report for public inspection.

(14) This chapter does not prevent the director from disclosing the content of any of the following to a department of this state, a department of any other state, or a federal agency,

at any time, that agrees to hold the content as confidential in a manner that is consistent with this chapter:

(a) A final report described under subsection (11).

(b) A preliminary examination report or results.

(c) Any matter relating to the items described in subdivisions (a) and (b).

(15) If reasonable and necessary costs of a market conduct action are assessed against an insurer that is subject to the action, the fees must be consistent with fees otherwise authorized under law. The fees described in this subsection must be itemized, and bills must be provided to the insurer on a monthly basis for review before submission for payment.

(16) The director shall maintain active management and oversight of examination costs for examinations described in this chapter, including costs associated with the director's own examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the director retains outside assistance in administering the requirements under this chapter, the director shall have, in writing, protocols that do all of the following:

(a) Clearly identify the types of functions to be subject to outsourcing.

(b) Provide specific timelines for completion of the outsourced review.

(c) Require disclosure of contract examiners' recommendations.

(d) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees.

(e) Require disclosure of the terms of the contracts with the

outside consultants that will be used, specifically the fees and hourly rates that can be charged.

(17) The director shall review and affirmatively endorse detailed billings from a qualified contract examiner before the detailed billings are sent to the insurer.

Sec. 485. (1) Except as otherwise provided by law and subject to subsection (4), during market conduct action, market conduct surveillance personnel must have as free, convenient, and full access, as practicable, to all books and records, employees, officers, and directors of the insurer subject to the market conduct action. An insurer that uses a third-party model or product for any of the activities subject to action shall, on the request of market conduct surveillance personnel, ensure that the details of the models or products are made available to the market conduct surveillance personnel. All documents, including, but not limited to, working papers, third-party models or products, complaint logs, and copies of those items, that are created, produced, obtained by, or disclosed to any of the following persons as follows are confidential and privileged, are not subject to subpoena, and are not subject to discovery or admissible as evidence in any private civil action:

(a) The director or any other person in the course of any market conduct actions made under this chapter.

(b) The director in the course of a market analysis by the director of the market conditions of an insurer.

(c) The NAIC as a result of any provision of this chapter.

(2) A disclosure to the director under this section does not waive any applicable privilege or claim of confidentiality as created under subsection (1).

(3) If an action is ordered by the director under section 222, market conduct surveillance personnel may issue subpoenas and examine insurance company personnel under oath.

(4) In performing duties under this chapter, the director may do all of the following:

(a) Share documents, materials, or other information, including confidential and privileged documents, materials, or information described in subsection (1), with other state, federal, and international regulatory agencies, law enforcement authorities, and the NAIC and its affiliates and subsidiaries, if the recipient agrees to, and has the legal authority to, maintain the confidential and privileged status of the document, material, or information.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates or subsidiaries and regulatory and law enforcement officials of other foreign or domestic jurisdictions. The director shall maintain as confidential or privileged any document, material, or information described in this subdivision that is received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

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

Sec. 486. (1) Market conduct surveillance personnel must be qualified by education, experience, and, where applicable, professional designations. If the director determines that the assistance is necessary, the director may supplement in-house

market conduct surveillance staff with qualified outside professional assistance.

(2) Market conduct surveillance personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management of, have been employed by, or own a pecuniary interest in the insurer that is subject to any examination under this chapter. This section does not automatically preclude any of the following individuals from serving as market conduct surveillance personnel:

(a) A policyholder or claimant under an insurance policy.

(b) 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.

(c) An investment owner in shares of regulated diversified investment companies.

(d) A settlor or beneficiary of a blind trust into which any otherwise permissible holdings have been placed.

Sec. 487. (1) A person shall not file a civil action against the director, the director's authorized representative, or an examiner appointed by the director, and the director, the director's authorized representatives, or an examiner appointed by the director is not liable, for any statements made or conduct performed in good faith while carrying out this chapter.

(2) A person shall not file a civil action against any person, and a person is not liable, for communicating or delivering information or data to the director, the director's authorized representative, or an examiner pursuant to an examination made under this chapter, if the communication or delivery was performed in good faith and without fraudulent intent or an intent to

deceive.

(3) The director, the director's authorized representative, or an examiner appointed by the director is entitled to an award of attorney fees and costs if the director, the director's authorized representative, or an examiner appointed by the director is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out this chapter, and the person bringing the action was not substantially justified in bringing the action. As used in this subsection, "substantially justified" means the action had a reasonable basis in law or fact at the time that it was initiated.

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

Sec. 488. (1) Fines and penalties applied to an insurer under this act applied as a result of market conduct action must be consistent, reasonable, and justified.

(2) In determining the appropriate fines to apply as described under subsection (1), the director shall consider both of the following factors:

(a) Actions taken by insurers to maintain membership in, and comply with the standards of, best-practices organizations that promote high ethical standards of conduct in the marketplace.

(b) The extent to which insurers maintain regulatory compliance programs to self-assess, self-report, and remediate problems detected.

Sec. 489. (1) The director shall collect and report market data to the NAIC's market information systems, including the NAIC Complaint Database System, the NAIC Examination Tracking System, and the NAIC Regulatory Information Retrieval System, or other

successor NAIC products, as determined by the director.

(2) The department shall compile information it collects and maintains in a manner that meets the requirements of the NAIC.

Sec. 490. The director shall share information and coordinate the department's market analysis and examination efforts with other states through the NAIC.

Sec. 491. (1) The director shall, at least annually, make available, in an appropriate manner, information on new laws and regulations, enforcement actions, and other information the director determines is pertinent to ensure compliance with market conduct requirements to persons subject to this chapter. The failure of the director to provide information is not a defense for an insurer that fails to comply with any insurance law of this state.

(2) The director must designate a specific person or persons within the department whose responsibilities must include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules, or regulations by employers, as defined in this chapter. The director shall provide the person or persons described in this subsection with proper training on the handling of the information that is considered confidential communication for the purposes of this chapter.

Enacting section 1. This amendatory act takes effect January 1, 2026.