

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0899.01 Thomas Morris x4218

SENATE BILL 14-148

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A BILL FOR AN ACT

101 CONCERNING MARKET CONDUCT EXAMINATIONS CONDUCTED BY THE
102 COMMISSIONER OF INSURANCE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill modifies the standards pursuant to which the commissioner of insurance conducts market conduct examinations by:

- ! Focusing on the activities of insurers that cause actual harm to insurance consumers rather than administrative errors and specifying that unless extraordinary circumstances,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

demonstrated by clear and convincing evidence, indicate that an imminent risk to consumers requires immediate action, insurers are not subject to a market conduct examination more frequently than once every 5 years (**section 2**);

! Requiring the pre-examination conference to be conducted in accordance with the pre-examination provisions of the national association of insurance commissioners' market conduct examiner's handbook and specifying the issues that the parties must discuss during the pre-examination conference (**section 3**); and

! Requiring all fines and penalties to be rationally related to actual harm suffered by consumers as a result of actions, errors, or omissions of the insurer; specifying that the aggregate total amount of fines cannot exceed one year of reported profit earned by the insurer; and, requiring the commissioner, when imposing fines or penalties, to consider actual harm suffered by insurance consumers and prohibiting the commissioner from considering administrative errors or infrequent or unintentional random errors that do not cause significant consumer harm (**section 4**).

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds, determines, and declares that the purpose of this act is to
4 establish a framework for market conduct actions with a focus on market
5 regulation designed to protect consumers in ways that strike a balance
6 between the interests of consumers and insurers and, among other
7 matters:

8 (a) To permit the commissioner of insurance to assess fines and
9 penalties based upon actual harm suffered by insurance consumers;

10 (b) To protect insurers from adverse administrative action based
11 upon administrative errors or errors that do not cause significant
12 consumer harm; and

13 (c) To provide a means of resolving targeted on-site marketing

1 conduct examination issues early in the process.

2 **SECTION 2.** In Colorado Revised Statutes, 10-1-211, **amend** (1)
3 introductory portion, (1) (a), and (2) (a) as follows:

4 **10-1-211. Protocols for market conduct actions.** (1) Each
5 market conduct action taken as a result of a market analysis ~~shall~~ MUST:

6 (a) Focus on the general business practices and compliance
7 activities of insurers THAT CAUSE ACTUAL HARM TO INSURANCE
8 CONSUMERS rather than initiating market conduct actions in response to
9 ADMINISTRATIVE ERRORS OR clearly infrequent or unintentional random
10 errors that do not cause significant consumer harm; and

11 (2) (a) (I) The commissioner ~~is authorized to~~ MAY determine the
12 frequency and timing of market conduct actions taken as a result of a
13 market analysis; EXCEPT THAT AN INSURER IS NOT SUBJECT TO A NEW
14 MARKET CONDUCT ACTION MORE FREQUENTLY THAN ONCE EVERY FIVE
15 YEARS UNLESS THE DEMONSTRATION SPECIFIED IN SUBPARAGRAPH (II) OF
16 THIS PARAGRAPH (a) has been made.

17 (II) The timing ~~shall depend~~ OF A MARKET CONDUCT ACTION
18 DEPENDS upon the specific market conduct action to be initiated unless
19 extraordinary circumstances ~~indicating a~~ ARE DEMONSTRATED TO THE
20 COMMISSIONER BY CLEAR AND CONVINCING EVIDENCE THAT INDICATE
21 THAT AN IMMINENT risk to consumers ~~require~~ REQUIRES immediate action,
22 IN WHICH CASE THE TIME LIMITATION SPECIFIED IN SUBPARAGRAPH (I) OF
23 THIS PARAGRAPH (a) DOES NOT APPLY. A MARKET CONDUCT ACTION
24 BASED ON IMMINENT RISK TO CONSUMERS MAY BE INSTITUTED ONLY
25 AFTER THE COMMISSIONER ISSUES A WRITTEN FINDING AND SERVES THE
26 FINDING UPON THE INSURER SUBJECT TO THE MARKET CONDUCT ACTION.

27 **SECTION 3.** In Colorado Revised Statutes, 10-1-212, **add** (5.5)

1 as follows:

2 **10-1-212. Targeted, on-site market conduct examinations -**
3 **rules.** (5.5) THE PRE-EXAMINATION CONFERENCE SHALL BE CONDUCTED
4 IN ACCORDANCE WITH THE PRE-EXAMINATION PROVISIONS OF THE NAIC
5 MARKET CONDUCT EXAMINER'S HANDBOOK. DURING THE
6 PRE-EXAMINATION CONFERENCE, THE PARTIES SHALL DISCUSS:

7 (a) EARLY RESOLUTION AND SIMPLIFICATION OF ANY ISSUE OR ANY
8 DISPUTE;

9 (b) HOW TO AVOID THE PRODUCTION OF UNNECESSARY OR
10 DUPLICATIVE INFORMATION; AND

11 (c) HOW TO FACILITATE IN OTHER WAYS THE JUST, SPEEDY, AND
12 INEXPENSIVE DISPOSITION OF THE EXAMINATION.

13 **SECTION 4.** In Colorado Revised Statutes, **amend** 10-1-215 as
14 follows:

15 **10-1-215. Fines and penalties.** (1) (a) Fines and penalties levied
16 as a result of a market conduct action or other action enforcing this part
17 ~~2 shall~~ MUST be consistent, reasonable, and justified.

18 (b) ALL FINES AND PENALTIES MUST BE RATIONALLY RELATED TO
19 ACTUAL HARM SUFFERED BY CONSUMERS AS A RESULT OF ACTIONS,
20 ERRORS, OR OMISSIONS OF THE INSURER.

21 (c) THE TOTAL AMOUNT OF FINES MUST NOT EXCEED ONE YEAR OF
22 REPORTED PROFIT EARNED BY THE INSURER SUBJECT TO THE EXAMINATION
23 FOR THE FIVE-YEAR PERIOD OF TIME ENCOMPASSED BY THE EXAMINATION.

24 (2) The commissioner:

25 (a) Shall take into consideration:

26 (I) Actions taken by insurers to maintain membership in, and
27 comply with the standards of, best-practice organizations that promote

1 high ethical standards of conduct in the marketplace and the extent to
2 which insurers maintain regulatory compliance programs to self-assess,
3 self-report, and remediate problems detected; and

4 (II) ACTUAL HARM SUFFERED BY INSURANCE CONSUMERS, WHICH
5 MUST BE SPECIFIED IN A REPORT PREPARED IN ACCORDANCE WITH SECTION
6 10-1-205;

7 (b) SHALL NOT TAKE INTO CONSIDERATION ADMINISTRATIVE
8 ERRORS OR INFREQUENT OR UNINTENTIONAL RANDOM ERRORS THAT DO
9 NOT CAUSE SIGNIFICANT CONSUMER HARM; AND

10 ~~(b)~~ (c) May include the considerations specified in paragraph (a)
11 of this subsection (2) in determining the appropriate fines levied in
12 accordance with subsection (1) of this section.

13 **SECTION 5. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly (August 6, 2014, if adjournment sine die is on May 7,
17 2014); except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within such period, then the act, item, section, or part
20 will not take effect unless approved by the people at the general election
21 to be held in November 2014 and, in such case, will take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) This act applies to conduct occurring on or after the applicable
24 effective date of this act.