
OLR Bill Analysis

sSB 1028 (File 273, as amended by Senate “D”)*

AN ACT CONCERNING INSURANCE DEPARTMENT EXAMINATIONS OF MARKET CONDUCT ACTIVITY.

SUMMARY:

The law authorizes the insurance commissioner to perform market conduct examinations of regulated entities (i.e., insurers, HMOs, third-party administrators, and fraternal benefit societies doing business in Connecticut). A market conduct examination is an audit to determine compliance with applicable state laws and regulations.

This bill authorizes the commissioner to hire outside professionals (e.g., attorneys, independent actuaries or certified public accountants, and other experts not on the commissioner’s staff) to assist with the examinations of domestic entities if the commissioner determines (1) the examination requires additional resources or expertise not available from the commissioner’s staff and (2) there is a risk to consumers that requires immediate action. The examined entity must pay the cost of these professionals. The bill requires the commissioner to conduct examinations in a way that (1) is cost effective and (2) protects consumers.

The bill exempts a domestic entity from paying the salaries, fringe benefits, travel, and maintenance expenses of the department’s examiners if the entity is assessed under law to pay the Insurance Department’s operating expenses. The law already exempts domestic insurers from examination costs, but requires domestic entities to pay the examiner’s travel and maintenance expenses when the department examines the entity outside of Connecticut.

The bill specifies that no cause of action or liability accrues against specified people for activities related to market conduct examinations performed in good faith.

Additionally, the bill makes certain examination documents confidential and not subject to subpoena. It allows the commissioner to share examination reports, preliminary reports or results, or any related matter with state, federal, and international regulatory agencies and states' law enforcement authorities if the recipient agrees in writing to keep the information confidential.

Lastly, the bill makes technical and conforming changes relating to examinations of third-party administrators. PA 11-58 added third-party administrators to the list of entities that the commissioner may examine. The bill adds references to third-party administrators throughout the market conduct examination statute.

*Senate Amendment "D" (1) limits the instances when the insurance commissioner can hire outside professionals, (2) restores existing law that requires examined non-domestic entities to pay examination costs, (3) eliminates a provision that entitled the prevailing party in a civil suit regarding market conduct examination activities to an award of attorney's fees and costs, and (4) makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

IMMUNITY

The bill specifies that no cause of action or liability accrues against the commissioner, his authorized representatives, or appointed examiners for statements made or conduct performed in good faith while carrying out market conduct examinations. Further, no cause of action or liability accrues against anyone communicating or delivering information to the commissioner, his representatives, or examiners during an examination if the communication or delivery is performed in good faith and without the intent to defraud or deceive.

The bill states that it does not abrogate or modify any common law or statutory privilege or immunity the commissioner, his representatives, or examiners currently enjoy.

CONFIDENTIALITY

The bill makes working papers, recorded information, documents, and copies of these produced or obtained by, or disclosed to, the commissioner or anyone during a market conduct examination confidential and not subject to subpoena. The bill generally prohibits the commissioner or anyone else from making them public. The bill allows the commissioner to grant the National Association of Insurance Commissioners access, if it agrees in writing to keep them confidential.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 12 Nay 6 (03/14/2013)

Judiciary Committee

Joint Favorable

Yea 19 Nay 14 (05/23/2013)