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Senate Bill 548 (as introduced 9-17-25)

Sponsor: Senator Jeff Irwin

Committee: Finance, Insurance, and Consumer Protection

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# **INTRODUCTION**

The bill would establish a framework through which the Director of the Department of Insurance and Financial Services (DIFS) would have to monitor, examine, and penalize insurance companies based on the protection of insurance customers. Specifically, DIFS would have to monitor the insurance market to develop a baseline understanding and identify insurer patterns or practices that deviated from the norm or posed a potential risk to consumers. If such a pattern or practice were identified, the bill would require the DIFS Director to consider and initiate information-gathering activities (market conduct actions) to assess insurers' practices. For example, the bill would allow the Director to interview insurers or review insurer self-evaluation and compliance programs. The Director also could work with other states to investigate an insurer and employ market conduct surveillance personnel for investigations.

If the Director deemed market conduct actions inappropriate, the Director could conduct a targeted examination that focused on the details of an insurer's operation, such as its underwriting and rating systems or advertising campaigns. The bill would prescribe standards and timelines for the conduct of targeted examinations. The Director would have to alert the insurer of an investigation, work with an insurer's examination coordinator throughout, and conduct pre- and post-investigation interviews. The Director would have to draft preliminary and final reports on investigations and allow an insurer to review them before sharing publicly.

The bill would require the DIFS Director to determine appropriate penalties and fines for insurers that engaged in behavior that harmed consumers. It also would allow the Director to bill an insurer for the costs of an investigation. The Director, DIFS, and individuals who aided in an investigation would be exempt from liability for actions under the bill. The framework would have to adhere to National Association of Insurance Commissioners (NAIC) guidelines.

The bill would take effect January 1, 2026.

#### **FISCAL IMPACT**

The bill would not have a significant fiscal impact on DIFS because DIFS already performs a small number of market conduct analyses. Any additional analyses performed would be offset by charges made to the entity investigated as described under the bill. The specific individual designated by the Director to receive associated information would be an existing employee. As a result, it is possible that an increase in overall appropriations to DIFS would be requested in future fiscal years; however, this likely would reflect additional revenue received from these fees. The Department likely would experience some minor administrative costs to ensure compliance.

Proposed MCL 500.481–500.491 Analyst: Nathan Leaman

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#### **CONTENT**

The bill would add Chapter 4A (Market Conduct Examinations) to the Insurance Code to do the following:

- -- Require the Director of DIFS to ensure that market analysis was conducted on an ongoing basis.
- -- Require the Director to assess and address the market practices of insurers with market conduct actions if the Director deemed such action necessary and if such action were cost-effective and protected consumers.
- -- Require the Director to notify an insurer if the Director were considering a market conduct action that involved insurer participation or response.
- -- Require the Director to take steps to eliminate duplicative inquiries and to coordinate market conduct actions and findings with other states.
- -- Allow the Director to determine the frequency and timing of market conduct actions, including simultaneous actions against multiple insurers.
- -- Require market conduct surveillance personnel to prepare a work plan and to gather data before conducting a targeted on-site examination.
- -- Allow the Director to conduct a targeted examination if the Director determined that market conduct actions were inappropriate.
- -- Require market conduct actions to be conducted in accordance with guidelines established by the NAIC.
- -- Require the Director to disclose the planning and commencement of a market conduct action through notification to insurers and through the NAIC's Examination Tracking System, as soon as possible.
- -- Require the Director to disclose the planning of a targeted examination at least 60 days before the examination's commencement.
- -- Require the Director to conduct a pre-examination conference with the insurer examination coordinator and key personnel at least 30 days before an action.
- -- Require the examiner-in-charge of a market conduct surveillance personnel team to schedule an exit conference with the insurer following an examination.
- -- Require the Director to provide a copy of a draft report within 60 days after the completion of the action for insurer input, which would have to be delivered within 30 days.
- -- Require the Director to issue a final report within 30 days after the receipt of insurer input and maintain the report's confidentiality for 30 days after its issue.
- -- Require an insurer to accept the final report and its findings or request a public hearing within 30 days of the report's issuance.
- -- Require the Director to maintain active management and oversight of examination costs, including the costs of contracting with outside assistance, for which the Director would have to develop written protocols.
- -- Establish information disclosure and confidentiality requirements, including for information shared with the NAIC and other states.
- -- Establish professional requirements and conflicts-of-interest for market conduct surveillance personnel.
- -- Exempt the Director, the Department, and individuals who provided information to the Director and Department from civil liability for actions conducted under Chapter 4a.
- -- Establish requirements for reasonable and necessary costs of a market conduct action assessed against an insurer.
- -- Require the Director to determine appropriate penalties and fines for insurers.
- -- Establish reporting requirements concerning market conduct actions and investigations.

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#### **Definitions**

"Desk examination" would mean a targeted examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination usually would be performed at DIFS' offices with the insurer providing, for review, requested documents by hard copy, microfiche, discs, or other electronic media.

"Market analysis" would mean 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. "Pertinent information" would mean information gathered by market conduct surveillance personnel from all the following:

- -- Data currently available to DIFS.
- -- Surveys and information from required reports.
- -- Information collected by the NAIC and other sources in the public and private sectors.
- -- Information from within and outside the insurance industry.

"Market conduct action" would mean 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. The term would not include the Director's resolution of an individual consumer complaint or other report of a specific instance of misconduct.

"Market conduct surveillance personnel" would mean 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.

"NAIC Market Conduct Examiner's Handbook" would mean 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.

"NAIC Market Conduct Uniform Examination Procedures" would mean 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.

"NAIC Market Regulation Handbook" would mean 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.

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

"On-site examination" would mean a targeted examination conducted at the insurer's home office or the location where the records under review are stored.

"Qualified contract examiner" would mean a person under contract with the Director who is qualified by education, experience, and, where applicable, professional designations to perform market conduct actions.

"Targeted examination" would mean a focused exam based on the results of a market analysis that indicated a need to review a specific line of business or specific business practices. A targeted examination could be conducted by desk examination or by an on-site examination.

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"Specific line of business or specific business practices" would include, but not be limited to, the following:

- -- Underwriting and rating.
- -- Marketing and sales.
- -- Complaint handling operations and management.
- -- Advertising materials.
- -- Licensing.
- -- Policyholder services.
- -- Nonforfeitures.
- -- Claims handling.
- -- Policy forms and filings.

"Third-party model or product" would mean 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.

### Considering Market Conduct Actions

The bill would require the Director of DIFS to ensure that market analysis was conducted on an ongoing basis. If the Director determined as a result that further inquiry into a particular insurer or practice was needed, the Director could consider the following continuum of market conduct actions before conducting a targeted examination by on-site examination:

- -- Correspondence with the insurer.
- -- Insurer interviews.
- -- Information gathering.
- -- Policy and procedure reviews.
- -- Interrogatories.
- -- Review of insurer self-evaluation and compliance programs.<sup>1</sup>
- -- Desk examinations.
- -- Examinations.

The Director could give an insurer reasonable opportunity to resolve, to the satisfaction of the Director, matters that arose as a result of a market analysis before additional market conduct actions were taken against the insurer.

The Director would have to select actions for consideration that 1) were cost effective for DIFS and the insurer and 2) protected insurance consumers. If the considered action involved insurer participation or response, the Director would have to notify the insurer in writing.

The bill also would require the Director to take steps reasonably necessary to eliminate duplicative inquiries and to coordinate market conduct actions and findings with other states.

### Taking Market Conduct Actions or Targeted Examinations

The bill would allow the Director to determine the frequency and timing of market conduct actions. If the Director had information indicating that more than one insurer was engaged in common practices that violated statute or rules, the Director could schedule and coordinate multiple market conduct actions simultaneously.

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<sup>&</sup>lt;sup>1</sup> This review could include consideration of the insurer's membership in a best-practices organization if the Director were satisfied that the organization's qualification process was likely to provide reasonable assurance of compliance with pertinent insurance laws.

The actions taken by the Director would have to focus on the general business practices and compliance activities of insurers rather than identifying infrequent or unintentional random errors that did not cause significant consumer harm. To the extent feasible, market conduct actions would have to be conducted by desk examination.

If the Director determined that the continuum of market conduct actions listed previously was inappropriate, the Director could conduct a targeted examination by on-site examination (targeted on-site examination) in accordance with NAIC Market Conduct Uniform Examination Procedures and the NAIC Market Conduct Examiner's Handbook. Data requests would have to be used before a targeted on-site examination was considered.

Before a targeted on-site examination, the bill would require market conduct surveillance personnel to prepare a work plan consisting of the following:

- -- The name and address of the insurer being examined.
- -- The name and contact information of the examiner-in-charge.
- -- The justification for the targeted on-site examination.
- -- The scope of the targeted on-site examination.
- -- The date the on-site examination was scheduled to begin.
- -- Notice of any non-insurance department personnel who would assist in the examination.
- -- A time estimate for the targeted on-site examination.
- -- A budget for the targeted on-site examination, if the cost of the examination were billed to the insurer.
- -- An identification of factors that would be included in the billing if the cost of the examination were billed to the insurer.

The bill would require market conduct actions to be conducted in accordance with the guidelines set forth in the NAIC Market Conduct Examiner's Handbook and the NAIC Market Conduct Uniform Examinations Procedures. Additionally, DIFS would have to use the NAIC Standard Data Request or a successor product to request data or information during an onsite examination. If the NAIC changed or otherwise updated a referenced NAIC work product, and this change 1) necessitated a change in statute, regulation, or rule *or* 2) caused the Director to deviate from the most recently adopted NAIC work product, the Director would have to notify and provide parties with an opportunity for a public hearing.

The Director would have to make an announcement and scheduling of market conduct action by notifying the insurer and posting on the NAIC's Examination Tracking System, or a successor product, as determined by the Director, as soon as possible. If DIFS were conducting a targeted examination on-site, the Director would have to make such an announcement at least 60 days before the examination's estimated commencement. An announcement of an action or examination would have to include the aforementioned work plan and a request for the insurer to name its examination coordinator.

At least 30 days before the commencement of any market conduct action, the bill would require the Director to conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations. Similarly, before the conclusion of a targeted on-site examination, the examiner-in-charge of the market conduct surveillance personnel team would have to schedule an exit conference with the insurer.

### Finalizing Market Conduct Actions or Targeted Examinations

Unless a mutual agreement was reached with the insurer to modify the timeline, the bill would require the Director to deliver a draft report to the insurer within 60 days after the completion

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of market conduct action. The insurer would have to respond with written comments within 30 days after receipt of the draft report.

Unless the timeline was extended, DIFS would have to make a good-faith effort to resolve issues informally and prepare a final report within 30 days after receiving the insurer's written response to the draft report. The Director could make corrections and other changes to the final report as appropriate.

Within 30 days after the issuance of the final report, the insurer would have to accept the final report and its findings or request a hearing. The insurer could request a 30-day extension to this deadline. The Director would have to hold the contents of the report as private and confidential for at least 30 days after acceptance of the report. After this period passed, the Director would have to open the report for public inspection, unless a court of competent jurisdiction stayed its publication.

If an insurer submitted a response to the draft or final report, the Director would have to include the insurer's response as an appendix to or in the text of the report. Individuals involved in the examination could not be named in either the report or the response, except to acknowledge their involvement.

Chapter 4a would not prevent the Director from disclosing the content of a final report, a preliminary examination report or results, or any related matter, to a department of the State, a department of any other state, or a Federal agency, at any time, that agreed to hold the contents as confidential.

The bill would require the Director to maintain active management and oversight of examination costs for examinations conducted under Chapter 4a, 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 retained outside assistance in administering these requirements (see <u>Market Conduct Surveillance Personnel</u>), the Director would have to develop written protocols that did the following:

- -- Clearly identified the types of functions to be subject to outsourcing.
- -- Provided specific timelines for completion of the outsourced review.
- -- Required disclosure of contract examiners' recommendations.
- -- Established and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees.
- -- Required disclosure of the terms of the contracts with the outside consultants that would be used, specifically the fees and hourly rates that could be charged.

The Director would have to review and affirmatively endorse detailed billings from a qualified contract examiner before the detailed billings were sent to the insurer.

#### Information Disclosure

The bill would require every person from whom information was sought and the person's officers, directors, and agents to provide the Director 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 person. An officer, director, employee, insurance producer, and agent of a person would be required to facilitate market conduct actions and aid in market conduct actions so far as it was in their power to do so.

During market action, market conduct surveillance personnel would have to be given free, convenient, and full access, as practicable, to all books and records, employees, officers, and

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directors of the insurer subject to market conduct action. An insurer that used a third-party model or product for any of the activities subject to action would have to, on the request of market conduct surveillance personnel, ensure that the details of the models or products were made available to the market conduct surveillance personnel. All documents, including working papers, third-party models or products, complaint logs, and copies of those items, that were created, produced, obtained by, or disclosed to any of the following persons would be confidential and privileged, not subject to subpoena, and not subject to discovery or admissible as evidence in any private civil action:

- -- The Director or any other person in the course of any market conduct actions made under Chapter 4a.
- -- The Director during a market analysis by an insurer's director of market conditions.
- -- The NAIC because of any provision of Chapter 4a.

A disclosure to the Director would not waive any applicable privilege or claim of confidentiality.

If the Director ordered an action under Section 222, market conduct surveillance personnel could issue subpoenas and examine insurance company personnel under oath. (Section 222 of the Code allows the Director of DIFS or the Director's authorized deputy to examine the books, records, documents, and papers of an insurer at any time after its articles of incorporation had been filed or it had been authorized to do business in the State. Under Section 222, the Director also may examine the affairs of a domestic insurer or a foreign or alien insurer doing business in the State).

Additionally, the bill would grant the Director the ability to do the following in performance of the Director's duties under Chapter 4a:

- -- Share documents, materials, or other information, including confidential and privileged documents, materials, or information, with other state, Federal, and international regulatory agencies, law enforcement authorities, and the NAIC and its affiliates and subsidiaries, if the recipient agreed to, and had the legal authority to, maintain the confidential and privileged status of the document, material, or information.
- -- Receive documents, materials, or information, including 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 would have to maintain as confidential or privileged any document, material, or information that was received with notice or the understanding that it was confidential or privileged under the laws of the jurisdiction that was the source of the document, material, or information.
- -- Enter into agreements governing the sharing and use of information.

## Market Conduct Surveillance Personnel

The bill would require market conduct surveillance personnel to be qualified by education, experience, and, where applicable, professional designations. If the Director determined that assistance was necessary, the Director could supplement in-house market conduct surveillance staff with qualified outside professional assistance.

Market conduct surveillance personnel would be considered to have a conflict of interest, either directly or indirectly, if they were affiliated with the management of, had been employed by, or owned a financial interest in the insurer that was subject to an examination; however, any of the following individuals could serve as market conduct surveillance personnel:

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- -- A policyholder or claimant under an insurance policy.
- -- 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.
- -- An investment owner in shares of regulated diversified investment companies.
- -- A settlor or beneficiary of a blind trust into which any otherwise permissible holdings had been placed.

### **Departmental Liability**

The bill would prohibit a person from filing a civil action against the Director, the Director's authorized representative, or an examiner appointed by the Director for actions carried out under Chapter 4a. The Director, the Director's authorized representatives, or an examiner appointed by the Director would not be liable for any statements made or conduct performed in good faith while carrying out Chapter 4a.

The bill also would prohibit a person from filing a civil action against a person for communicating or delivering information or data to the Director, the Director's authorized representative, or an examiner, if required by Chapter 4a and if the communication or delivery were performed in good faith and without fraudulent intent or an intent to deceive. A person would not be liable for such actions.

The Director, the Director's authorized representative, or an examiner appointed by the Director would be entitled to an award of attorney fees and costs if the Director, the Director's authorized representative, or an examiner appointed by the Director were the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out Chapter 4a, and the person bringing the action was not substantially justified in bringing the action.<sup>2</sup>

These provisions would not revoke or modify any applicable common law or statutory privilege or immunity.

### Fees, Fines, and Penalties

If reasonable and necessary costs of a market conduct action were assessed against an insurer subject to the action, the fees would have to be consistent with fees otherwise authorized under law. The fees would have to be itemized. Bills would have to be provided to the insurer on a monthly basis for review before submission for payment.

The bill would require fines and penalties applied to an insurer under Chapter 4a to be consistent, reasonable, and justified. The bill would task the Director of DIFS with determining appropriate fines. In doing so, the Director would have to consider the following factors:

- -- Actions taken by insurers to maintain membership in, and comply with the standards of best-practices organizations that promoted high ethical standards of conduct in the marketplace.
- -- The extent to which insurers maintained regulatory compliance programs to self-assess, self-report, and remediate problems detected.

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<sup>&</sup>lt;sup>2</sup> "Substantially justified" would mean the action had a reasonable basis in law or fact at the time that it was initiated.

#### Market Conduct Action Alternatives

Additionally, the Director could accept an examination report from another state concerning an insurer licensed in Michigan, provided that the other state had a market surveillance system the Director deemed comparable to the State's. The Director's determination would be discretionary and would not be subject to appeal. (An examination report from another state would serve as an alternative to the market conduct actions previously identified).

# Reporting Requirements

The bill would require the Director to 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. This information would have to meet the requirements of the NAIC.

The Director also would have to share information and coordinate DIFS' market analysis and examination efforts with other states through the NAIC.

Additionally, the bill would require the Director to make available, in an appropriate manner, information on new laws and regulations, enforcement actions, and other information the Director determined was pertinent to ensure compliance with market conduct requirements to persons subject to Chapter 4a, at least annually. The failure of the Director to provide this information would not be a defense for an insurer that failed to comply with any insurance law of the State.

Lastly, the bill would require the Director to designate a specific person or persons within DIFS whose responsibilities included the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules, or regulations by employers. The Director would have to provide this person or persons with proper training on the handling of the information that was considered confidential communication.

#### **PREVIOUS LEGISLATION**

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of House Bill 6265 from the 2023-2024 Legislative Session.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.