



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1479

Introduced 2/7/2023, by Sen. Ann Gillespie

SYNOPSIS AS INTRODUCED:

215 ILCS 5/132	from Ch. 73, par. 744
215 ILCS 5/132.5	from Ch. 73, par. 744.5
215 ILCS 5/155.35	
215 ILCS 5/402	from Ch. 73, par. 1014
215 ILCS 5/511.109	from Ch. 73, par. 1065.58-109
215 ILCS 5/512-3	from Ch. 73, par. 1065.59-3
215 ILCS 5/512-5	from Ch. 73, par. 1065.59-5
215 ILCS 5/512-11 new	
215 ILCS 5/513b3	

Amends the Illinois Insurance Code. Sets forth provisions concerning market conduct and nonfinancial examinations; market analysis and market conduct actions; access to books and records; examination reports; hearings; disclosures; confidentiality; corrective actions; and immunity to liability of market conduct surveillance personnel. Provides that the Director of Insurance shall collect and report market data to the National Association of Insurance Commissioner's market information systems. Provides that if the Director or an examiner finds that an administrator or pharmacy benefit manager has violated insurance-related laws or regulations under specified circumstances, then, unless the health care payer, health insurer, or plan sponsor is included in the examination and has been afforded the same opportunity to request or participate in a hearing on the examination report, the examination report shall not allege a violation by the health care payer, health insurer, or plan sponsor and the Director's order based on the report shall not impose any requirements, prohibitions, or penalties on the health care payer, health insurer, or plan sponsor. Removes various provisions concerning market conduct and nonfinancial examinations. Defines terms. Makes other changes. Effective immediately.

LRB103 05817 BMS 50837 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 132, 132.5, 155.35, 402, 511.109, 512-3,
6 512-5, and 513b3 and by adding Section 512-11 as follows:

7 (215 ILCS 5/132) (from Ch. 73, par. 744)

8 Sec. 132. Market conduct and nonfinancial ~~non-financial~~
9 examinations.

10 (a) Definitions. As used in this Section:

11 "Data call" means a written request by the Director to one
12 or more regulated companies or persons seeking data or other
13 information to be provided within a reasonable period for a
14 narrow and targeted purpose to address specific questions of
15 the Director.

16 "Desk examination" means an examination that is conducted
17 by market conduct surveillance personnel at a location other
18 than the regulated company's or person's premises. "Desk
19 examination" includes an examination performed at the
20 Department's offices with the company or person providing
21 requested documents by hard copy, microfiche, or discs or
22 other electronic media for review without an on-site
23 examination.

1 "Market analysis" means a process whereby market conduct
2 surveillance personnel collect and analyze information from
3 filed schedules, surveys, data calls, required reports, and
4 other sources to develop a baseline understanding of the
5 marketplace and to identify patterns or practices of regulated
6 persons that deviate significantly from the norm or that may
7 pose a potential risk to insurance consumers.

8 "Market conduct action" means any activity that the
9 Director may initiate to assess and address the market
10 practices of regulated persons, including market analysis and
11 market conduct examinations. The Department's consumer
12 complaint process outlined in 50 Ill. Adm. Code 926 is not a
13 market conduct action for purposes of this Section; however,
14 the Department may initiate market conduct actions based on
15 information gathered during that process. "Market conduct
16 action" includes, but is not limited to:

17 (1) correspondence with the company or person;

18 (2) interviews with the company or person;

19 (3) information gathering;

20 (4) policy and procedure reviews;

21 (5) interrogatories;

22 (6) review of company or person self-evaluations and
23 voluntary compliance programs;

24 (7) self-audits; and

25 (8) market conduct examinations.

26 "Market conduct examination" or "examination" means any

1 type of examination that assesses a regulated person's
2 compliance with the laws, rules, and regulations applicable to
3 the examinee. "Market conduct examination" includes
4 comprehensive examinations, targeted examinations, and
5 follow-up examinations, which may be conducted as desk
6 examinations, on-site examinations, or a combination of those
7 2 methods.

8 "Market conduct surveillance" means market analysis or a
9 market conduct action.

10 "Market conduct surveillance personnel" means those
11 individuals employed or retained by the Department and
12 designated by the Director to collect, analyze, review, or act
13 on information in the insurance marketplace that identifies
14 patterns or practices of persons subject to the Director's
15 jurisdiction. "Market conduct surveillance personnel" includes
16 all persons identified as an examiner in the insurance laws or
17 rules of this State if the Director has designated them to
18 assist her or him in ascertaining the nonfinancial business
19 practices, performance, and operations of a company or person
20 subject to the Director's jurisdiction.

21 "On-site examination" means an examination conducted at
22 the company's or person's home office or the location where
23 the records under review are stored.

24 (b) Companies and persons subject to surveillance. The
25 Director, for the purposes of ascertaining the nonfinancial
26 business practices, performance, and operations of any person

1 subject to the Director's jurisdiction or within the
2 marketplace, may engage in market conduct actions or market
3 analysis relating to:

4 (1) any company transacting or being organized to
5 transact business in this State;

6 (2) any person engaged in or proposing to be engaged
7 in the organization, promotion, or solicitation of shares
8 or capital contributions to or aiding in the formation of
9 a company;

10 (3) any person having a written or oral contract
11 pertaining to the management or control of a company as
12 general agent, managing agent, or attorney-in-fact;

13 (4) any licensed or registered producer, firm,
14 pharmacy benefit manager, administrator, or any person
15 making application for any license, certificate, or
16 registration;

17 (5) any person engaged in the business of adjusting
18 losses or financing premiums; or

19 (6) any person, organization, trust, or corporation
20 having custody or control of information reasonably
21 related to the operation, performance, or conduct of a
22 company or person subject to the Director's jurisdiction.

23 (c) Market analysis and market conduct actions.

24 (1) The Director may perform market analysis by
25 gathering and analyzing information from data currently
26 available to the Director, information from surveys or

1 reports that are submitted regularly to the Director or
2 that are required in a data call, information collected by
3 the NAIC, and information from a variety of other sources
4 to develop a baseline understanding of the marketplace and
5 to identify for further review companies or practices that
6 deviate from the norm or that may pose a potential risk to
7 insurance consumers. The Director shall use the most
8 recent NAIC Market Regulation Handbook as a guide in
9 performing market analysis. The Director may also employ
10 other guidelines or procedures as the Director may deem
11 appropriate.

12 (2) The Director may initiate a market conduct action
13 subject to the following:

14 (A) If the Director determines that further
15 inquiry into a particular person or practice is
16 needed, then the Director may consider the continuum
17 of market conduct actions. The Director shall inform
18 the examinee of the initiation of the market conduct
19 action and shall use the most recent NAIC Market
20 Regulation Handbook as a guide in performing the
21 market conduct action. The Director may also employ
22 other guidelines or procedures as the Director may
23 deem appropriate.

24 (B) For an examination, the Director shall conduct
25 a pre-examination conference with the examinee to
26 clarify expectations before commencement of the

1 examination. The Director shall provide at least
2 30-days' advance notice of the date of the
3 pre-examination conference unless circumstances
4 warrant that the examination proceed more quickly.

5 (C) The Director may coordinate a market conduct
6 action and findings of this State with market conduct
7 actions and findings of other states.

8 (3) Nothing in this Section requires the Director to
9 undertake market analysis before initiating any market
10 conduct action.

11 (4) Nothing in this Section restricts the Director to
12 the type of market conduct action he or she initially
13 selected.

14 (5) A regulated person is required to respond to a
15 data call on the terms and conditions established by the
16 Director, and failure to do so may be punished as set forth
17 in subsection (j).

18 (d) Access to books and records. Every examinee and its
19 officers, directors, and agents must provide to the Director
20 convenient and free access at all reasonable hours at its
21 office or location to all books, records, and documents and
22 any or all papers relating to the business, performance,
23 operations, and affairs of the examinee. The officers,
24 directors, and agents of the examinee must facilitate the
25 market conduct action and aid in the action so far as it is in
26 their power to do so. The Director and any authorized market

1 conduct surveillance personnel have the power to administer
2 oaths and examine under oath any person relevant to the
3 business of the examinee. Any delay of more than 5 business
4 days in the transmission of requested documents without an
5 extension approved by the Director or designated market
6 conduct surveillance personnel is a violation of this Section.

7 (e) Examination report. The market conduct surveillance
8 personnel designated by the Director under Section 402 must
9 make a full and true report of every examination made by them
10 that contains only facts ascertained from the books, papers,
11 records, documents, and other evidence obtained by
12 investigation and examined by them or ascertained from the
13 testimony of officers, agents, or other persons examined under
14 oath concerning the business, affairs, conduct, and
15 performance of the examinee. The report of examination must be
16 verified by the oath of the examiner in charge thereof, and
17 when so verified is prima facie evidence in any action or
18 proceeding in the name of the State against the examinee, its
19 officers, directors, or agents upon the facts stated therein.

20 (f) Examinee response to examination report. The
21 Department and the examinee shall comply with the following
22 timeline, unless a mutual agreement is reached to modify the
23 timeline:

24 (1) The Department shall deliver a draft report to the
25 examinee as soon as reasonably practicable. Nothing in
26 this Section prevents the Department from sharing an

1 earlier draft of the report with the examinee before
2 confirming that the examination is completed.

3 (2) If the examinee chooses to respond with written
4 submissions or rebuttals, then the examinee must do so
5 within 30 days after receipt of any draft report delivered
6 after the completion of the examination.

7 (3) As soon as reasonably practicable after receipt of
8 any written submissions or rebuttals, the Department shall
9 issue a final report. The Department may share draft
10 corrections or changes to the draft report with the
11 examinee at any time before issuing a final report, and
12 the examinee shall have 30 days to respond to the revised
13 draft.

14 (4) The examinee shall, within 10 days after the
15 issuance of the final report, accept the final report or
16 request a hearing in writing. Failure to take either
17 action within 10 days shall be deemed an acceptance of the
18 final report. If the examinee accepts the examination
19 report, the Director shall continue to hold the content of
20 the examination report as private and confidential for a
21 period of 30 days. Thereafter, the Director shall open the
22 report for public inspection.

23 (g) Hearing; final examination report. Notwithstanding
24 anything to the contrary in this Code or Department rules, if
25 the examinee requests a hearing, then the following procedures
26 apply:

1 (1) The examinee must request the hearing in writing
2 and must specify the issues in the final report that the
3 examinee is challenging. The examinee is limited to
4 challenging the issues that were previously challenged in
5 the examinee's written submission and rebuttal or
6 supplemental submission and rebuttal pursuant to
7 paragraphs (2) and (3) of subsection (f).

8 (2) Except as permitted in paragraphs (3) and (8) of
9 this subsection, the hearing shall be limited to the
10 written arguments submitted by the parties to the
11 designated hearing officer. The designated hearing officer
12 may, however, grant a live hearing upon the request of
13 either party if the hearing officer deems it necessary or
14 useful to the resolution of any or all of the matters in
15 dispute.

16 (3) Discovery is limited to the market conduct
17 surveillance personnel's work papers that are relevant to
18 the issues the examinee is challenging. The relevant
19 market conduct surveillance personnel's work papers shall
20 be admitted into the record. No other forms of discovery,
21 including depositions and interrogatories, are allowed,
22 except upon written agreement of the examinee and the
23 Department when necessary to conduct a fair hearing or as
24 otherwise provided in this subsection.

25 (4) Only the examinee and the Department may submit
26 written arguments.

1 (5) The examinee must submit its written argument and
2 any supporting evidence within 30 days after the
3 Department serves a formal notice of hearing.

4 (6) The Department must submit its written response
5 and any supporting evidence within 30 days after the
6 examinee submits its written argument.

7 (7) The designated hearing officer may allow
8 additional written submissions if necessary or useful to
9 the resolution of the hearing.

10 (8) If either the examinee or the Department submit
11 written testimony or affidavits, then the opposing party
12 shall be given the opportunity to cross-examine the
13 witness and to submit the cross-examination to the hearing
14 officer before a decision.

15 (9) The Director shall issue a decision accompanied by
16 findings and conclusions. The Director's order is a final
17 administrative decision and shall be served upon the
18 examinee together with a copy of the final report within
19 90 days after the conclusion of the hearing. The hearing
20 is deemed concluded on the later of the last date of any
21 live hearing or the final deadline date for written
22 submissions to the hearing officer, including any
23 continuances or supplemental briefings permitted by the
24 hearing officer.

25 (10) Any portion of the final examination report that
26 was not challenged by the examinee is incorporated into

1 the decision of the Director.

2 (11) Findings of fact and conclusions of law in the
3 Director's final administrative decision are prima facie
4 evidence in any legal or regulatory action.

5 (12) If an examinee has requested a hearing, then the
6 Director shall continue to hold the final report and any
7 related decision as private and confidential for a period
8 of 49 days after the final administrative decision. After
9 the 49-day period expires, the Director shall open the
10 final report and any related decision for public
11 inspection if a court of competent jurisdiction has not
12 stayed its publication.

13 (h) Disclosure. So long as the recipient agrees to and
14 verifies in writing its legal authority to hold the
15 information confidential in a manner consistent with this
16 Section, nothing in this Section prevents the Director from
17 disclosing at any time the content of an examination report,
18 preliminary examination report, or results, or any matter
19 relating to a report or results, to:

20 (1) other public agencies of this State;

21 (2) the insurance regulatory authorities of any other
22 state; or

23 (3) any agency or office of the federal government.

24 (i) Confidentiality.

25 (1) The Director and any other person in the course of
26 market conduct surveillance shall keep confidential all

1 documents, including working papers, third-party models,
2 or products; complaint logs; copies of any documents
3 created, produced, obtained by, or disclosed to the
4 Director, market conduct surveillance personnel, or any
5 other person in the course of market conduct surveillance
6 conducted pursuant to this Section; and all documents
7 obtained by the NAIC pursuant to this Section. The
8 documents shall remain confidential after the termination
9 of the market conduct surveillance, are not subject to
10 subpoena, are not subject to discovery or admissible as
11 evidence in private civil litigation, are not subject to
12 disclosure under the Freedom of Information Act, and must
13 not be made public at any time or used by the Director or
14 any other person, except as provided in paragraphs (3),
15 (4), and (6) of this subsection (i) and in subsection (k).

16 (2) The Director and any other person in the course of
17 market conduct surveillance shall keep confidential any
18 self-evaluation or voluntary compliance program documents
19 disclosed to the Director or other person by an examinee
20 and the data collected via the NAIC market conduct annual
21 statement. The documents are not subject to subpoena, are
22 not subject to discovery or admissible as evidence in
23 private civil litigation, are not subject to disclosure
24 under the Freedom of Information Act, and they shall not
25 be made public or used by the Director or any other person,
26 except as provided in paragraphs (3) and (4) of this

1 subsection (i), in subsection (k), or in Section 155.35.

2 (3) Notwithstanding paragraphs (1) and (2) of this
3 subsection (i), and consistent with paragraph (5) of this
4 subsection (i), in order to assist in the performance of
5 the Director's duties, the Director may:

6 (A) share documents, materials, communications, or
7 other information, including the confidential and
8 privileged documents, materials, or information
9 described in this subsection (i), with other State,
10 federal, alien, and international regulatory agencies
11 and law enforcement authorities and the NAIC, its
12 affiliates, and subsidiaries, if the recipient agrees
13 to and verifies in writing its legal authority to
14 maintain the confidentiality and privileged status of
15 the document, material, communication, or other
16 information;

17 (B) receive documents, materials, communications,
18 or information, including otherwise confidential and
19 privileged documents, materials, or information, from
20 the NAIC and its affiliates or subsidiaries, and from
21 regulatory and law enforcement officials of other
22 State, federal, alien, or international jurisdictions,
23 authorities, and agencies, and shall maintain as
24 confidential or privileged any document, material,
25 communication, or information received with notice or
26 the understanding that it is confidential or

1 privileged under the laws of the jurisdiction that is
2 the source of the document, material, communication,
3 or information; and

4 (C) enter into agreements governing the sharing
5 and use of information consistent with this Section.

6 (4) Nothing in this Section limits:

7 (A) the Director's authority to use, if consistent
8 with subsection (5) of Section 188.1, any final or
9 preliminary examination report, any market conduct
10 surveillance or examinee work papers or other
11 documents, or any other information discovered or
12 developed during the course of any market conduct
13 surveillance in the furtherance of any legal or
14 regulatory action initiated by the Director that the
15 Director may, in the Director's sole discretion, deem
16 appropriate; or

17 (B) the ability of an examinee to conduct
18 discovery in accordance with paragraph (3) of
19 subsection (g).

20 (5) Disclosure to or by the Director of documents,
21 materials, communications, or information required as part
22 of any type of market conduct surveillance does not waive
23 any applicable privilege or claim of confidentiality in
24 the documents, materials, communications, or information.

25 (6) Notwithstanding the confidentiality requirements
26 in this subsection (i) or confidentiality requirements

1 otherwise imposed by law with the sole exception of the
2 Illinois Trade Secrets Act, if the Director performs any
3 data call for market analysis, excluding data collected
4 via the NAIC market conduct annual statement, then the
5 Director may make the results of the market analysis
6 available for public inspection in a manner deemed
7 appropriate by the Director, so long as:

8 (A) the company or individual providing the
9 information was given 15-days' notice identifying the
10 information to be publicly released; and

11 (B) no court of competent jurisdiction has stayed
12 its publication under the Illinois Trade Secrets Act.

13 (7) The Director may, upon one-day's notice to the
14 examinee, publicly acknowledge the existence of an ongoing
15 examination before filing the examination report but shall
16 not disclose any other information protected under this
17 subsection (i).

18 (j) Corrective actions.

19 (1) As a result of any market conduct action other
20 than market analysis, the Director may take any action the
21 Director considers necessary or appropriate in accordance
22 with the report of examination or any hearing thereon for
23 acts in violation of any law, rule, or prior lawful order
24 of the Director. Such actions include, but are not limited
25 to:

26 (A) requiring the regulated person to undertake

1 corrective actions to cease and desist an identified
2 violation or institute processes and practices to
3 comply with applicable standards;

4 (B) requiring reimbursement or restitution of any
5 actual losses or damages to persons harmed by the
6 regulated person's violation with interest at the rate
7 of 9% per year from the date that the actual loss or
8 damage was incurred; and

9 (C) imposing civil penalties as provided in this
10 subsection (j).

11 (2) The Director may order a penalty of up to \$3,000
12 for a violation of any law, rule, or prior lawful order of
13 the Director. Each day during which a violation occurs
14 constitutes a separate offense. If the examination report
15 finds a violation by the examinee that the report is
16 unable to quantify such as an operational policy or
17 procedure that conflicts with applicable law, then the
18 Director may order a penalty of up to \$10,000 for that
19 violation. Any failure to respond to a data call or
20 violation of subsection (d) may carry a fine of up to
21 \$2,000 per day up to a maximum of \$500,000.

22 (3) If any other provision of this Code or any other
23 law or rule under the Director's jurisdiction prescribes
24 an amount or range of monetary penalty for a violation of a
25 particular statute or rule or a maximum penalty in the
26 aggregate for repeated violations, the Director shall

1 assess penalties pursuant to the terms of the statute or
2 rule allowing the largest penalty.

3 (4) If any other provision of this Code or any other
4 law or rule under the Director's jurisdiction prescribes
5 or specifies a method by which the Director is to
6 determine a violation, then compliance with the process
7 set forth herein shall be deemed to comply with the method
8 prescribed or specified in the other provision.

9 (5) If the Director imposes any sanctions or
10 corrective actions described in subparagraphs (A) through
11 (C) of paragraph (1) of this subsection (j) based on the
12 final report, the Director shall include those actions in
13 a proposed stipulation and consent order enclosed with the
14 final report issued to the examinee under subsection (f).
15 The examinee shall have 10 days to sign the order or
16 request a hearing in writing on the actions proposed in
17 the order regardless of whether the examinee requests a
18 hearing on the contents of the report under subsection
19 (f). If the examinee does not sign the order or request a
20 hearing on the proposed actions or the final report within
21 10 days, the Director may issue a final order imposing the
22 sanctions or corrective actions. Nothing in this Section
23 prevents the Department from sharing an earlier draft of
24 the proposed order with the examinee before issuing the
25 final report.

26 (6) If the examinee accepts the order and the final

1 report, the Director shall hold the content of the order
2 and report as private and confidential for a period of 30
3 days. Thereafter, the Director shall open the order and
4 report for public inspection.

5 (7) If the examinee makes a timely request for a
6 hearing on the order, the request must specify the
7 sanctions or corrective actions in the order that the
8 examinee is challenging. Any hearing shall follow the
9 procedures set forth in paragraphs (2) through (7) of
10 subsection (g).

11 (8) If the examinee has also requested a hearing on
12 the contents of the report, then that hearing shall be
13 consolidated with the hearing on the order. The Director
14 shall not impose sanctions or corrective actions under
15 this Section until the conclusion of the hearing.

16 (9) The Director shall issue a decision accompanied by
17 findings and conclusions along with any corrective actions
18 or sanctions. Any sanctions or corrective actions shall be
19 based on the final report accepted by the examinee or
20 adopted by the Director under paragraph (9) of subsection
21 (g). The Director's order is a final administrative
22 decision and shall be served upon the examinee together
23 with a copy of the final report within 90 days after the
24 conclusion of the hearing or within 10 days after the
25 examinee's acceptance of the proposed order and final
26 report, as applicable. The hearing is deemed concluded on

1 the later of the last date of any live hearing or the final
2 deadline date for written submissions to the hearing
3 officer, including any continuances or supplemental
4 briefings permitted by the hearing officer.

5 (10) If an examinee has requested a hearing under this
6 subsection (i), the Director shall continue to hold the
7 final order and examination report as private and
8 confidential for a period of 49 days after the final
9 administrative decision. After the 49-day period expires,
10 the Director shall open the final order and examination
11 report if a court of competent jurisdiction has not stayed
12 their publication.

13 (k) National market conduct databases. The Director shall
14 collect and report market data to the NAIC's market
15 information systems, including, but not limited to, the
16 Complaint Database System, the Examination Tracking System,
17 and the Regulatory Information Retrieval System, or other
18 successor NAIC products as determined by the Director.
19 Information collected and maintained by the Department for
20 inclusion in these NAIC market information systems shall be
21 compiled in a manner that meets the requirements of the NAIC.

22 (l) Immunity of market conduct surveillance personnel.

23 (1) No cause of action shall arise nor shall any
24 liability be imposed against the Director, the Director's
25 authorized representatives, market conduct surveillance
26 personnel, or an examiner appointed by the Director for

1 any statements made or conduct performed in good faith
2 while carrying out the provisions of this Section.

3 (2) No cause of action shall arise nor shall any
4 liability be imposed against any person for the act of
5 communicating or delivering information or data to the
6 Director, the Director's authorized representative, market
7 conduct surveillance personnel, or examiner pursuant to an
8 examination made under this Section, if the act of
9 communication or delivery was performed in good faith and
10 without fraudulent intent or the intent to deceive.

11 (3) A person identified in paragraph (1) of this
12 subsection (1) shall be entitled to an award of attorney's
13 fees and costs if he or she is the prevailing party in a
14 civil cause of action for libel, slander, or any other
15 relevant tort arising out of activities in carrying out
16 the provisions of this Section and the party bringing the
17 action was not substantially justified in doing so. As
18 used in this paragraph, a proceeding is substantially
19 justified if it had a reasonable basis in law or fact at
20 the time it was initiated.

21 (4) This subsection (1) does not abrogate or modify in
22 any way any common law or statutory privilege or immunity
23 heretofore enjoyed by any person identified in paragraph
24 (1) of this subsection (1).

25 ~~(1) The Director, for the purposes of ascertaining the~~
26 ~~non financial business practices, performance, and operations~~

1 ~~of any company, may make examinations of:~~

2 ~~(a) any company transacting or being organized to~~
3 ~~transact business in this State;~~

4 ~~(b) any person engaged in or proposing to be engaged~~
5 ~~in the organization, promotion, or solicitation of shares~~
6 ~~or capital contributions to or aiding in the formation of~~
7 ~~a company;~~

8 ~~(c) any person having a contract, written or oral,~~
9 ~~pertaining to the management or control of a company as~~
10 ~~general agent, managing agent, or attorney in fact;~~

11 ~~(d) any licensed or registered producer, firm, or~~
12 ~~administrator, or any person, organization, or corporation~~
13 ~~making application for any licenses or registration;~~

14 ~~(e) any person engaged in the business of adjusting~~
15 ~~losses or financing premiums; or~~

16 ~~(f) any person, organization, trust, or corporation~~
17 ~~having custody or control of information reasonably~~
18 ~~related to the operation, performance, or conduct of a~~
19 ~~company or person subject to the jurisdiction of the~~
20 ~~Director.~~

21 ~~(2) Every company or person being examined and its~~
22 ~~officers, directors, and agents must provide to the Director~~
23 ~~convenient and free access at all reasonable hours at its~~
24 ~~office or location to all books, records, documents, and any~~
25 ~~or all papers relating to the business, performance,~~
26 ~~operations, and affairs of the company. The officers,~~

1 ~~directors, and agents of the company or person must facilitate~~
2 ~~the examination and aid in the examination so far as it is in~~
3 ~~their power to do so.~~

4 ~~The Director and any authorized examiner have the power to~~
5 ~~administer oaths and examine under oath any person relative to~~
6 ~~the business of the company being examined.~~

7 ~~(3) The examiners designated by the Director under Section~~
8 ~~402 must make a full and true report of every examination made~~
9 ~~by them, which contains only facts ascertained from the books,~~
10 ~~papers, records, or documents, and other evidence obtained by~~
11 ~~investigation and examined by them or ascertained from the~~
12 ~~testimony of officers or agents or other persons examined~~
13 ~~under oath concerning the business, affairs, conduct, and~~
14 ~~performance of the company or person. The report of~~
15 ~~examination must be verified by the oath of the examiner in~~
16 ~~charge thereof, and when so verified is prima facie evidence~~
17 ~~in any action or proceeding in the name of the State against~~
18 ~~the company, its officers, or agents upon the facts stated~~
19 ~~therein.~~

20 ~~(4) The Director must notify the company or person made~~
21 ~~the subject of any examination hereunder of the contents of~~
22 ~~the verified examination report before filing it and making~~
23 ~~the report public of any matters relating thereto, and must~~
24 ~~afford the company or person an opportunity to demand a~~
25 ~~hearing with reference to the facts and other evidence therein~~
26 ~~contained.~~

1 ~~The company or person may request a hearing within 10 days~~
2 ~~after receipt of the examination report by giving the Director~~
3 ~~written notice of that request, together with a statement of~~
4 ~~its objections. The Director must then conduct a hearing in~~
5 ~~accordance with Sections 402 and 403. He must issue a written~~
6 ~~order based upon the examination report and upon the hearing~~
7 ~~within 90 days after the report is filed or within 90 days~~
8 ~~after the hearing.~~

9 ~~If the examination reveals that the company is operating~~
10 ~~in violation of any law, regulation, or prior order, the~~
11 ~~Director in the written order may require the company or~~
12 ~~person to take any action he considers necessary or~~
13 ~~appropriate in accordance with the report of examination or~~
14 ~~any hearing thereon. The order is subject to judicial review~~
15 ~~under the Administrative Review Law. The Director may withhold~~
16 ~~any report from public inspection for such time as he may deem~~
17 ~~proper and may, after filing the same, publish any part or all~~
18 ~~of the report as he considers to be in the interest of the~~
19 ~~public, in one or more newspapers in this State, without~~
20 ~~expense to the company.~~

21 ~~(5) Any company which or person who violates or aids and~~
22 ~~abets any violation of a written order issued under this~~
23 ~~Section shall be guilty of a business offense and may be fined~~
24 ~~not more than \$5,000. The penalty shall be paid into the~~
25 ~~General Revenue fund of the State of Illinois.~~

26 (Source: P.A. 87-108.)

1 (215 ILCS 5/132.5) (from Ch. 73, par. 744.5)

2 Sec. 132.5. Examination reports.

3 (a) General description. All examination reports shall be
4 comprised of only facts appearing upon the books, records, or
5 other documents of the company, its agents, or other persons
6 examined or as ascertained from the testimony of its officers,
7 agents, or other persons examined concerning its affairs and
8 the conclusions and recommendations as the examiners find
9 reasonably warranted from those facts.

10 (b) Filing of examination report. No later than 60 days
11 following completion of the examination, the examiner in
12 charge shall file with the Department a verified written
13 report of examination under oath. Upon receipt of the verified
14 report, the Department shall transmit the report to the
15 company examined, together with a notice that affords the
16 company examined a reasonable opportunity of not more than 30
17 days to make a written submission or rebuttal with respect to
18 any matters contained in the examination report.

19 (c) Adoption of the report on examination. Within 30 days
20 of the end of the period allowed for the receipt of written
21 submissions or rebuttals, the Director shall fully consider
22 and review the report, together with any written submissions
23 or rebuttals and any relevant portions of the examiners work
24 papers and enter an order:

25 (1) Adopting the examination report as filed or with

1 modification or corrections. If the examination report
2 reveals that the company is operating in violation of any
3 law, regulation, or prior order of the Director, the
4 Director may order the company to take any action the
5 Director considers necessary and appropriate to cure the
6 violation.

7 (2) Rejecting the examination report with directions
8 to the examiners to reopen the examination for purposes of
9 obtaining additional data, documentation, or information
10 and refiling under subsection (b).

11 (3) Calling for an investigatory hearing with no less
12 than 20 days notice to the company for purposes of
13 obtaining additional documentation, data, information, and
14 testimony.

15 (d) Order and procedures. All orders entered under
16 paragraph (1) of subsection (c) shall be accompanied by
17 findings and conclusions resulting from the Director's
18 consideration and review of the examination report, relevant
19 examiner work papers, and any written submissions or
20 rebuttals. The order shall be considered a final
21 administrative decision and may be appealed in accordance with
22 the Administrative Review Law. The order shall be served upon
23 the company by certified mail, together with a copy of the
24 adopted examination report. Within 30 days of the issuance of
25 the adopted report, the company shall file affidavits executed
26 by each of its directors stating under oath that they have

1 received a copy of the adopted report and related orders.

2 Any hearing conducted under paragraph (3) of subsection
3 (c) by the Director or an authorized representative shall be
4 conducted as a nonadversarial confidential investigatory
5 proceeding as necessary for the resolution of any
6 inconsistencies, discrepancies, or disputed issues apparent
7 upon the face of the filed examination report or raised by or
8 as a result of the Director's review of relevant work papers or
9 by the written submission or rebuttal of the company. Within
10 20 days of the conclusion of any hearing, the Director shall
11 enter an order under paragraph (1) of subsection (c).

12 The Director shall not appoint an examiner as an
13 authorized representative to conduct the hearing. The hearing
14 shall proceed expeditiously with discovery by the company
15 limited to the examiner's work papers that tend to
16 substantiate any assertions set forth in any written
17 submission or rebuttal. The Director or his representative may
18 issue subpoenas for the attendance of any witnesses or the
19 production of any documents deemed relevant to the
20 investigation, whether under the control of the Department,
21 the company, or other persons. The documents produced shall be
22 included in the record, and testimony taken by the Director or
23 his representative shall be under oath and preserved for the
24 record. Nothing contained in this Section shall require the
25 Department to disclose any information or records that would
26 indicate or show the existence or content of any investigation

1 or activity of a criminal justice agency.

2 The hearing shall proceed with the Director or his
3 representative posing questions to the persons subpoenaed.
4 Thereafter the company and the Department may present
5 testimony relevant to the investigation. Cross-examination
6 shall be conducted only by the Director or his representative.
7 The company and the Department shall be permitted to make
8 closing statements and may be represented by counsel of their
9 choice.

10 (e) Publication and use. Upon the adoption of the
11 examination report under paragraph (1) of subsection (c), the
12 Director shall continue to hold the content of the examination
13 report as private and confidential information for a period of
14 35 days, except to the extent provided in subsection (b).
15 Thereafter, the Director may open the report for public
16 inspection so long as no court of competent jurisdiction has
17 stayed its publication.

18 Nothing contained in this Code shall prevent or be
19 construed as prohibiting the Director from disclosing the
20 content of an examination report, preliminary examination
21 report or results, or any matter relating thereto, to the
22 insurance department of any other state or country or to law
23 enforcement officials of this or any other state or agency of
24 the federal government at any time, so long as the agency or
25 office receiving the report or matters relating thereto agrees
26 in writing to hold it confidential and in a manner consistent

1 with this Code.

2 In the event the Director determines that regulatory
3 action is appropriate as a result of any examination, he may
4 initiate any proceedings or actions as provided by law.

5 (f) Confidentiality of ancillary information. All working
6 papers, recorded information, documents, and copies thereof
7 produced by, obtained by, or disclosed to the Director or any
8 other person in the course of any examination must be given
9 confidential treatment, are not subject to subpoena, and may
10 not be made public by the Director or any other persons, except
11 to the extent provided in subsection (e). Access may also be
12 granted to the National Association of Insurance
13 Commissioners. Those parties must agree in writing before
14 receiving the information to provide to it the same
15 confidential treatment as required by this Section, unless the
16 prior written consent of the company to which it pertains has
17 been obtained.

18 ~~This subsection (f) applies to market conduct examinations~~
19 ~~described in Section 132 of this Code.~~

20 (g) Disclosure. Nothing contained in this Code shall
21 prevent or be construed as prohibiting the Director from
22 disclosing the information described in subsections (e) and
23 (f) to the Illinois Insurance Guaranty Fund regarding any
24 member company defined in Section 534.5 if the member company
25 has an authorized control level event as defined in Section
26 35A-25. The Director may disclose the information described in

1 this subsection so long as the Fund agrees in writing to hold
2 that information confidential, in a manner consistent with
3 this Code, and uses that information to prepare for the
4 possible liquidation of the member company. Access to the
5 information disclosed by the Director to the Fund shall be
6 limited to the Fund's staff and its counsel. The Board of
7 Directors of the Fund may have access to the information
8 disclosed by the Director to the Fund once the member company
9 is subject to a delinquency proceeding under Article XIII
10 subject to any terms and conditions established by the
11 Director.

12 (Source: P.A. 102-929, eff. 5-27-22.)

13 (215 ILCS 5/155.35)

14 Sec. 155.35. Insurance compliance self-evaluative
15 privilege.

16 (a) To encourage insurance companies and persons
17 conducting activities regulated under this Code, both to
18 conduct voluntary internal audits of their compliance programs
19 and management systems and to assess and improve compliance
20 with State and federal statutes, rules, and orders, an
21 insurance compliance self-evaluative privilege is recognized
22 to protect the confidentiality of communications relating to
23 voluntary internal compliance audits. The General Assembly
24 hereby finds and declares that protection of insurance
25 consumers is enhanced by companies' voluntary compliance with

1 this State's insurance and other laws and that the public will
2 benefit from incentives to identify and remedy insurance and
3 other compliance issues. It is further declared that limited
4 expansion of the protection against disclosure will encourage
5 voluntary compliance and improve insurance market conduct
6 quality and that the voluntary provisions of this Section will
7 not inhibit the exercise of the regulatory authority by those
8 entrusted with protecting insurance consumers.

9 (b)(1) An insurance compliance self-evaluative audit
10 document is privileged information and is not admissible as
11 evidence in any legal action in any civil, criminal, or
12 administrative proceeding, except as provided in subsections
13 (c) and (d) of this Section. Documents, communications, data,
14 reports, or other information created as a result of a claim
15 involving personal injury or workers' compensation made
16 against an insurance policy are not insurance compliance
17 self-evaluative audit documents and are admissible as evidence
18 in civil proceedings as otherwise provided by applicable rules
19 of evidence or civil procedure, subject to any applicable
20 statutory or common law privilege, including, but not limited
21 to, the work product doctrine, the attorney-client privilege,
22 or the subsequent remedial measures exclusion.

23 (2) If any company, person, or entity performs or directs
24 the performance of an insurance compliance audit, an officer
25 or employee involved with the insurance compliance audit, or
26 any consultant who is hired for the purpose of performing the

1 insurance compliance audit, may not be examined in any civil,
2 criminal, or administrative proceeding as to the insurance
3 compliance audit or any insurance compliance self-evaluative
4 audit document, as defined in this Section. This subsection
5 (b) (2) does not apply if the privilege set forth in subsection
6 (b) (1) of this Section is determined under subsection (c) or
7 (d) not to apply.

8 (3) A company may voluntarily submit, in connection with
9 examinations conducted under this Article, an insurance
10 compliance self-evaluative audit document to the Director, or
11 his or her designee, as a confidential document under
12 subsection (i) of Section 132 or subsection (f) of Section
13 132.5 of this Code without waiving the privilege set forth in
14 this Section to which the company would otherwise be entitled;
15 provided, however, that the provisions in Sections 132 and
16 ~~subsection (f) of Section 132.5~~ permitting the Director to
17 make confidential documents public ~~pursuant to subsection (e)~~
18 ~~of Section 132.5~~ and grant access to the National Association
19 of Insurance Commissioners shall not apply to the insurance
20 compliance self-evaluative audit document so voluntarily
21 submitted. Nothing contained in this subsection shall give the
22 Director any authority to compel a company to disclose
23 involuntarily or otherwise provide an insurance compliance
24 self-evaluative audit document.

25 (c) (1) The privilege set forth in subsection (b) of this
26 Section does not apply to the extent that it is expressly

1 waived by the company that prepared or caused to be prepared
2 the insurance compliance self-evaluative audit document.

3 (2) In a civil or administrative proceeding, a court of
4 record may, after an in camera review, require disclosure of
5 material for which the privilege set forth in subsection (b)
6 of this Section is asserted, if the court determines one of the
7 following:

8 (A) the privilege is asserted for a fraudulent
9 purpose;

10 (B) the material is not subject to the privilege; or

11 (C) even if subject to the privilege, the material
12 shows evidence of noncompliance with State and federal
13 statutes, rules and orders and the company failed to
14 undertake reasonable corrective action or eliminate the
15 noncompliance within a reasonable time.

16 (3) In a criminal proceeding, a court of record may, after
17 an in camera review, require disclosure of material for which
18 the privilege described in subsection (b) of this Section is
19 asserted, if the court determines one of the following:

20 (A) the privilege is asserted for a fraudulent
21 purpose;

22 (B) the material is not subject to the privilege;

23 (C) even if subject to the privilege, the material
24 shows evidence of noncompliance with State and federal
25 statutes, rules and orders and the company failed to
26 undertake reasonable corrective action or eliminate such

1 noncompliance within a reasonable time; or

2 (D) the material contains evidence relevant to
3 commission of a criminal offense under this Code, and all
4 of the following factors are present:

5 (i) the Director, State's Attorney, or Attorney
6 General has a compelling need for the information;

7 (ii) the information is not otherwise available;
8 and

9 (iii) the Director, State's Attorney, or Attorney
10 General is unable to obtain the substantial equivalent
11 of the information by any means without incurring
12 unreasonable cost and delay.

13 (d)(1) Within 30 days after the Director, State's
14 Attorney, or Attorney General makes a written request by
15 certified mail for disclosure of an insurance compliance
16 self-evaluative audit document under this subsection, the
17 company that prepared or caused the document to be prepared
18 may file with the appropriate court a petition requesting an
19 in camera hearing on whether the insurance compliance
20 self-evaluative audit document or portions of the document are
21 privileged under this Section or subject to disclosure. The
22 court has jurisdiction over a petition filed by a company
23 under this subsection requesting an in camera hearing on
24 whether the insurance compliance self-evaluative audit
25 document or portions of the document are privileged or subject
26 to disclosure. Failure by the company to file a petition

1 waives the privilege.

2 (2) A company asserting the insurance compliance
3 self-evaluative privilege in response to a request for
4 disclosure under this subsection shall include in its request
5 for an in camera hearing all of the information set forth in
6 subsection (d) (5) of this Section.

7 (3) Upon the filing of a petition under this subsection,
8 the court shall issue an order scheduling, within 45 days
9 after the filing of the petition, an in camera hearing to
10 determine whether the insurance compliance self-evaluative
11 audit document or portions of the document are privileged
12 under this Section or subject to disclosure.

13 (4) The court, after an in camera review, may require
14 disclosure of material for which the privilege in subsection
15 (b) of this Section is asserted if the court determines, based
16 upon its in camera review, that any one of the conditions set
17 forth in subsection (c) (2) (A) through (C) is applicable as to
18 a civil or administrative proceeding or that any one of the
19 conditions set forth in subsection (c) (3) (A) through (D) is
20 applicable as to a criminal proceeding. Upon making such a
21 determination, the court may only compel the disclosure of
22 those portions of an insurance compliance self-evaluative
23 audit document relevant to issues in dispute in the underlying
24 proceeding. Any compelled disclosure will not be considered to
25 be a public document or be deemed to be a waiver of the
26 privilege for any other civil, criminal, or administrative

1 proceeding. A party unsuccessfully opposing disclosure may
2 apply to the court for an appropriate order protecting the
3 document from further disclosure.

4 (5) A company asserting the insurance compliance
5 self-evaluative privilege in response to a request for
6 disclosure under this subsection (d) shall provide to the
7 Director, State's Attorney, or Attorney General, as the case
8 may be, at the time of filing any objection to the disclosure,
9 all of the following information:

10 (A) The date of the insurance compliance
11 self-evaluative audit document.

12 (B) The identity of the entity conducting the audit.

13 (C) The general nature of the activities covered by
14 the insurance compliance audit.

15 (D) An identification of the portions of the insurance
16 compliance self-evaluative audit document for which the
17 privilege is being asserted.

18 (e) (1) A company asserting the insurance compliance
19 self-evaluative privilege set forth in subsection (b) of this
20 Section has the burden of demonstrating the applicability of
21 the privilege. Once a company has established the
22 applicability of the privilege, a party seeking disclosure
23 under subsections (c)(2)(A) or (C) of this Section has the
24 burden of proving that the privilege is asserted for a
25 fraudulent purpose or that the company failed to undertake
26 reasonable corrective action or eliminate the noncompliance

1 with a reasonable time. The Director, State's Attorney, or
2 Attorney General seeking disclosure under subsection (c) (3) of
3 this Section has the burden of proving the elements set forth
4 in subsection (c) (3) of this Section.

5 (2) The parties may at any time stipulate in proceedings
6 under subsections (c) or (d) of this Section to entry of an
7 order directing that specific information contained in an
8 insurance compliance self-evaluative audit document is or is
9 not subject to the privilege provided under subsection (b) of
10 this Section.

11 (f) The privilege set forth in subsection (b) of this
12 Section shall not extend to any of the following:

13 (1) documents, communications, data, reports, or other
14 information required to be collected, developed,
15 maintained, reported, or otherwise made available to a
16 regulatory agency pursuant to this Code, or other federal
17 or State law, rule, or order;

18 (2) information obtained by observation or monitoring
19 by any regulatory agency; or

20 (3) information obtained from a source independent of
21 the insurance compliance audit.

22 (g) As used in this Section:

23 (1) "Insurance compliance audit" means a voluntary,
24 internal evaluation, review, assessment, or audit not
25 otherwise expressly required by law of a company or an
26 activity regulated under this Code, or other State or

1 federal law applicable to a company, or of management
2 systems related to the company or activity, that is
3 designed to identify and prevent noncompliance and to
4 improve compliance with those statutes, rules, or orders.
5 An insurance compliance audit may be conducted by the
6 company, its employees, or by independent contractors.

7 (2) "Insurance compliance self-evaluative audit
8 document" means documents prepared as a result of or in
9 connection with and not prior to an insurance compliance
10 audit. An insurance compliance self-evaluation audit
11 document may include a written response to the findings of
12 an insurance compliance audit. An insurance compliance
13 self-evaluative audit document may include, but is not
14 limited to, as applicable, field notes and records of
15 observations, findings, opinions, suggestions,
16 conclusions, drafts, memoranda, drawings, photographs,
17 computer-generated or electronically recorded
18 information, phone records, maps, charts, graphs, and
19 surveys, provided this supporting information is collected
20 or developed for the primary purpose and in the course of
21 an insurance compliance audit. An insurance compliance
22 self-evaluative audit document may also include any of the
23 following:

24 (A) an insurance compliance audit report prepared
25 by an auditor, who may be an employee of the company or
26 an independent contractor, which may include the scope

1 of the audit, the information gained in the audit, and
2 conclusions and recommendations, with exhibits and
3 appendices;

4 (B) memoranda and documents analyzing portions or
5 all of the insurance compliance audit report and
6 discussing potential implementation issues;

7 (C) an implementation plan that addresses
8 correcting past noncompliance, improving current
9 compliance, and preventing future noncompliance; or

10 (D) analytic data generated in the course of
11 conducting the insurance compliance audit.

12 (3) "Company" has the same meaning as provided in
13 Section 2 of this Code.

14 (h) Nothing in this Section shall limit, waive, or
15 abrogate the scope or nature of any statutory or common law
16 privilege including, but not limited to, the work product
17 doctrine, the attorney-client privilege, or the subsequent
18 remedial measures exclusion.

19 (Source: P.A. 90-499, eff. 8-19-97; 90-655, eff. 7-30-98.)

20 (215 ILCS 5/402) (from Ch. 73, par. 1014)

21 Sec. 402. Examinations, investigations and hearings. (1)
22 All examinations, investigations and hearings provided for by
23 this Code may be conducted either by the Director personally,
24 or by one or more of the actuaries, technical advisors,
25 deputies, supervisors or examiners employed or retained by the

1 Department and designated by the Director for such purpose.
2 When necessary to supplement its examination procedures, the
3 Department may retain independent actuaries deemed competent
4 by the Director, independent certified public accountants,
5 attorneys, or qualified examiners of insurance companies
6 deemed competent by the Director, or any combination of the
7 foregoing, the cost of which shall be borne by the company or
8 person being examined. The Director may compensate independent
9 actuaries, certified public accountants, attorneys, and
10 qualified examiners retained for supplementing examination
11 procedures in amounts not to exceed the reasonable and
12 customary charges for such services. The Director may also
13 accept as a part of the Department's examination of any
14 company or person (a) a report by an independent actuary
15 deemed competent by the Director or (b) a report of an audit
16 made by an independent certified public accountant. Neither
17 those persons so designated nor any members of their immediate
18 families shall be officers of, connected with, or financially
19 interested in any company other than as policyholders, nor
20 shall they be financially interested in any other corporation
21 or person affected by the examination, investigation or
22 hearing.

23 (2) All hearings provided for in this Code shall, unless
24 otherwise specially provided, be held at such time and place
25 as shall be designated in a notice which shall be given by the
26 Director in writing to the person or company whose interests

1 are affected, at least 10 days before the date designated
2 therein. The notice shall state the subject of inquiry and the
3 specific charges, if any. The hearings shall be held in the
4 City of Springfield, the City of Chicago, or in the county
5 where the principal business address of the person or company
6 affected is located.

7 (Source: P.A. 87-757.)

8 (215 ILCS 5/511.109) (from Ch. 73, par. 1065.58-109)

9 (Section scheduled to be repealed on January 1, 2027)

10 Sec. 511.109. Examination.

11 (a) The Director or the Director's ~~his~~ designee may
12 examine any applicant for or holder of an administrator's
13 license in accordance with Sections 132 through 132.7. If the
14 Director or the examiners find that the administrator has
15 violated this Article or any other insurance-related laws,
16 rules, or regulations under the Director's jurisdiction
17 because of the manner in which the administrator has conducted
18 business on behalf of an insurer or plan sponsor, then, unless
19 the insurer or plan sponsor is included in the examination and
20 has been afforded the same opportunity to request or
21 participate in a hearing on the examination report, the
22 examination report shall not allege a violation by the insurer
23 or plan sponsor and the Director's order based on the report
24 shall not impose any requirements, prohibitions, or penalties
25 on the insurer or plan sponsor. Nothing in this Section shall

1 prevent the Director from using any information obtained
2 during the examination of an administrator to examine,
3 investigate, or take other appropriate regulatory or legal
4 action with respect to an insurer or plan sponsor.

5 ~~(b) Any administrator being examined shall provide to the~~
6 ~~Director or his designee convenient and free access, at all~~
7 ~~reasonable hours at their offices, to all books, records,~~
8 ~~documents and other papers relating to such administrator's~~
9 ~~business affairs.~~

10 ~~(c) The Director or his designee may administer oaths and~~
11 ~~thereafter examine any individual about the business of the~~
12 ~~administrator.~~

13 ~~(d) The examiners designated by the Director pursuant to~~
14 ~~this Section may make reports to the Director. Any report~~
15 ~~alleging substantive violations of this Article, any~~
16 ~~applicable provisions of the Illinois Insurance Code, or any~~
17 ~~applicable Part of Title 50 of the Illinois Administrative~~
18 ~~Code shall be in writing and be based upon facts obtained by~~
19 ~~the examiners. The report shall be verified by the examiners.~~

20 ~~(e) If a report is made, the Director shall either deliver~~
21 ~~a duplicate thereof to the administrator being examined or~~
22 ~~send such duplicate by certified or registered mail to the~~
23 ~~administrator's address specified in the records of the~~
24 ~~Department. The Director shall afford the administrator an~~
25 ~~opportunity to request a hearing to object to the report. The~~
26 ~~administrator may request a hearing within 30 days after~~

1 ~~receipt of the duplicate of the examination report by giving~~
2 ~~the Director written notice of such request together with~~
3 ~~written objections to the report. Any hearing shall be~~
4 ~~conducted in accordance with Sections 402 and 403 of this~~
5 ~~Code. The right to hearing is waived if the delivery of the~~
6 ~~report is refused or the report is otherwise undeliverable or~~
7 ~~the administrator does not timely request a hearing. After the~~
8 ~~hearing or upon expiration of the time period during which an~~
9 ~~administrator may request a hearing, if the examination~~
10 ~~reveals that the administrator is operating in violation of~~
11 ~~any applicable provision of the Illinois Insurance Code, any~~
12 ~~applicable Part of Title 50 of the Illinois Administrative~~
13 ~~Code or prior order, the Director, in the written order, may~~
14 ~~require the administrator to take any action the Director~~
15 ~~considers necessary or appropriate in accordance with the~~
16 ~~report or examination hearing. If the Director issues an~~
17 ~~order, it shall be issued within 90 days after the report is~~
18 ~~filed, or if there is a hearing, within 90 days after the~~
19 ~~conclusion of the hearing. The order is subject to review~~
20 ~~under the Administrative Review Law.~~

21 (Source: P.A. 84-887.)

22 (215 ILCS 5/512-3) (from Ch. 73, par. 1065.59-3)

23 Sec. 512-3. Definitions. For the purposes of this Article,
24 unless the context otherwise requires, the terms defined in
25 this Article have the meanings ascribed to them herein:

1 "Health care payer" means an insurance company, health
2 maintenance organization, limited health service organization,
3 health services plan corporation, or dental service plan
4 corporation authorized to do business in this State.

5 ~~(a)~~ "Third party prescription program" or "program" means
6 any system of providing for the reimbursement of
7 pharmaceutical services and prescription drug products offered
8 or operated in this State under a contractual arrangement or
9 agreement between a provider of such services and another
10 party who is not the consumer of those services and products.
11 Such programs may include, but need not be limited to,
12 employee benefit plans whereby a consumer receives
13 prescription drugs or other pharmaceutical services and those
14 services are paid for by an agent of the employer or others.

15 ~~(b)~~ "Third party program administrator" or "administrator"
16 means any person, partnership or corporation who issues or
17 causes to be issued any payment or reimbursement to a provider
18 for services rendered pursuant to a third party prescription
19 program, but does not include the Director of Healthcare and
20 Family Services or any agent authorized by the Director to
21 reimburse a provider of services rendered pursuant to a
22 program of which the Department of Healthcare and Family
23 Services is the third party.

24 (Source: P.A. 95-331, eff. 8-21-07.)

25 (215 ILCS 5/512-5) (from Ch. 73, par. 1065.59-5)

1 Sec. 512-5. Fiduciary and Bonding Requirements. A third
2 party prescription program administrator shall (1) establish
3 and maintain a fiduciary account, separate and apart from any
4 and all other accounts, for the receipt and disbursement of
5 funds for reimbursement of providers of services under the
6 program, or (2) post, or cause to be posted, a bond of
7 indemnity in an amount equal to not less than 10% of the total
8 estimated annual reimbursements under the program.

9 The establishment of such fiduciary accounts and bonds
10 shall be consistent with applicable State law. If a bond of
11 indemnity is posted, it shall be held by the Director of
12 Insurance for the benefit and indemnification of the providers
13 of services under the third party prescription program.

14 An administrator who operates more than one third party
15 prescription program may establish and maintain a separate
16 fiduciary account or bond of indemnity for each such program,
17 or may operate and maintain a consolidated fiduciary account
18 or bond of indemnity for all such programs.

19 The requirements of this Section do not apply to any third
20 party prescription program administered by or on behalf of any
21 health care payer ~~insurance company, Health Care Service Plan~~
22 ~~Corporation or Pharmaceutical Service Plan Corporation~~
23 ~~authorized to do business in the State of Illinois.~~

24 (Source: P.A. 82-1005.)

25 (215 ILCS 5/512-11 new)

1 Sec. 512-11. Examination. The Director or the Director's
2 designee may examine any applicant for or holder of an
3 administrator's registration in accordance with Sections 132
4 through 132.7 of this Code. If the Director or the examiners
5 find that the administrator has violated this Article or any
6 other insurance-related laws or regulations under the
7 Director's jurisdiction because of the manner in which the
8 administrator has conducted business on behalf of a separately
9 incorporated health care payer, then, unless the health care
10 payer is included in the examination and has been afforded the
11 same opportunity to request or participate in a hearing on the
12 examination report, the examination report shall not allege a
13 violation by the health care payer and the Director's order
14 based on the report shall not impose any requirements,
15 prohibitions, or penalties on the health care payer. Nothing
16 in this Section shall prevent the Director from using any
17 information obtained during the examination of an
18 administrator to examine, investigate, or take other
19 appropriate regulatory or legal action with respect to a
20 health care payer.

21 (215 ILCS 5/513b3)

22 Sec. 513b3. Examination. ~~(a)~~ The Director, or his or her
23 designee, may examine a registered pharmacy benefit manager in
24 accordance with Sections 132-132.7. If the Director or the
25 examiners find that the pharmacy benefit manager has violated

1 this Article or any other insurance-related laws, rules, or
2 regulations under the Director's jurisdiction because of the
3 manner in which the pharmacy benefit manager has conducted
4 business on behalf of a health insurer or plan sponsor, then,
5 unless the health insurer or plan sponsor is included in the
6 examination and has been afforded the same opportunity to
7 request or participate in a hearing on the examination report,
8 the examination report shall not allege a violation by the
9 health insurer or plan sponsor and the Director's order based
10 on the report shall not impose any requirements, prohibitions,
11 or penalties on the health insurer or plan sponsor. Nothing in
12 this Section shall prevent the Director from using any
13 information obtained during the examination of an
14 administrator to examine, investigate, or take other
15 appropriate regulatory or legal action with respect to a
16 health insurer or plan sponsor.

17 ~~(b) Any pharmacy benefit manager being examined shall~~
18 ~~provide to the Director, or his or her designee, convenient~~
19 ~~and free access to all books, records, documents, and other~~
20 ~~papers relating to such pharmacy benefit manager's business~~
21 ~~affairs at all reasonable hours at its offices.~~

22 ~~(c) The Director, or his or her designee, may administer~~
23 ~~oaths and thereafter examine the pharmacy benefit manager's~~
24 ~~designee, representative, or any officer or senior manager as~~
25 ~~listed on the license or registration certificate about the~~
26 ~~business of the pharmacy benefit manager.~~

1 ~~(d) The examiners designated by the Director under this~~
2 ~~Section may make reports to the Director. Any report alleging~~
3 ~~substantive violations of this Article, any applicable~~
4 ~~provisions of this Code, or any applicable Part of Title 50 of~~
5 ~~the Illinois Administrative Code shall be in writing and be~~
6 ~~based upon facts obtained by the examiners. The report shall~~
7 ~~be verified by the examiners.~~

8 ~~(e) If a report is made, the Director shall either deliver~~
9 ~~a duplicate report to the pharmacy benefit manager being~~
10 ~~examined or send such duplicate by certified or registered~~
11 ~~mail to the pharmacy benefit manager's address specified in~~
12 ~~the records of the Department. The Director shall afford the~~
13 ~~pharmacy benefit manager an opportunity to request a hearing~~
14 ~~to object to the report. The pharmacy benefit manager may~~
15 ~~request a hearing within 30 days after receipt of the~~
16 ~~duplicate report by giving the Director written notice of such~~
17 ~~request together with written objections to the report. Any~~
18 ~~hearing shall be conducted in accordance with Sections 402 and~~
19 ~~403 of this Code. The right to a hearing is waived if the~~
20 ~~delivery of the report is refused or the report is otherwise~~
21 ~~undeliverable or the pharmacy benefit manager does not timely~~
22 ~~request a hearing. After the hearing or upon expiration of the~~
23 ~~time period during which a pharmacy benefit manager may~~
24 ~~request a hearing, if the examination reveals that the~~
25 ~~pharmacy benefit manager is operating in violation of any~~
26 ~~applicable provision of this Code, any applicable Part of~~

1 ~~Title 50 of the Illinois Administrative Code, a provision of~~
2 ~~this Article, or prior order, the Director, in the written~~
3 ~~order, may require the pharmacy benefit manager to take any~~
4 ~~action the Director considers necessary or appropriate in~~
5 ~~accordance with the report or examination hearing. If the~~
6 ~~Director issues an order, it shall be issued within 90 days~~
7 ~~after the report is filed, or if there is a hearing, within 90~~
8 ~~days after the conclusion of the hearing. The order is subject~~
9 ~~to review under the Administrative Review Law.~~

10 (Source: P.A. 101-452, eff. 1-1-20.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.