

1 SB147  
2 164041-4  
3 By Senator Blackwell  
4 RFD: Banking and Insurance  
5 First Read: 05-MAR-15

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to insurance regulation by the Department  
12 of Insurance; to amend Section 27-2-24, Code of Alabama 1975;  
13 to provide procedures for reports of examination of insurance  
14 companies consistent with the model act developed by the  
15 National Association of Insurance Commissioners; to require an  
16 examiner to file a verified report of examination within 60  
17 days of completion of an examination; to allow the insurer 30  
18 days to file a rebuttal, after which time the Commissioner of  
19 Insurance could order the adoption of the report or the  
20 rejection of the report with direction to reopen the  
21 examination or call for a hearing; to require the commissioner  
22 to hold the content of an examination as private and  
23 confidential for a certain period and thereafter make the  
24 report open for public inspection, with certain exceptions; to  
25 require the commissioner to hold all documents, material, or  
26 other information created, produced, or obtained by or  
27 disclosed to the commissioner in the course of the examination

1 or in the course of the analysis by the commissioner of the  
2 financial condition or market conduct of the insurer, and  
3 documents or exhibits which contain information regarding the  
4 compensation of the officers or employees of a company as  
5 required by the instructions for annual statements,  
6 confidential and privileged and provided they are not subject  
7 to open records laws or subpoena; and to authorize the  
8 commissioner to share the documents, material, and other  
9 information with other state, federal, or international  
10 regulatory agencies, with the NAIC, and with state, federal,  
11 or international law enforcement authorities.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 27-2-24, Code of Alabama 1975, is  
14 amended to read as follows:

15 "§27-2-24.

16 "(a) The commissioner, or his or her examiner, shall  
17 make a full and true written report of each examination. The  
18 examination report shall contain only information obtained  
19 from examination of the books, records, accounts, files, ~~and~~  
20 or other documents of, or relative to, the person examined,   
21 its agents or other persons examined, or as ascertained from  
22 the testimony of individuals under oath its officers or agents  
23 or other persons examined concerning its affairs, together  
24 with conclusions and recommendations of as the examiner based  
25 thereon examiners find reasonable warranted from the facts.  
26 ~~The commissioner shall furnish a copy of the proposed report~~  
27 ~~to the person examined not less than 20 days prior to filing~~

1 ~~the report in his office. If such person so requests in~~  
2 ~~writing within such 20-day period, the commissioner shall~~  
3 ~~grant a hearing with respect to the report and shall not so~~  
4 ~~file the report until after the hearing and after such~~  
5 ~~modifications have been made therein as the commissioner deems~~  
6 ~~proper.~~

7 "(b) No later than 60 days following completion of  
8 the examination, the examiner in charge shall file with the  
9 department a verified written report of examination under  
10 oath. Upon receipt of the verified report, the department  
11 shall transmit the report to the company examined, together  
12 with a notice that the company examined may make a written  
13 submission or rebuttal with respect to any matter contained in  
14 the examination report within 30 days thereafter.

15 "(c) Within 30 days of the end of the period allowed  
16 for the receipt of written submissions or rebuttals, the  
17 commissioner shall fully consider and review the report,  
18 together with any written submissions or rebuttals and any  
19 relevant portions of the examiner's workpapers and enter one  
20 of the following:

21 "(1) An order adopting the examination report as  
22 filed or with modifications or corrections. If the examination  
23 report reveals that the company is operating in violation of  
24 any law, regulation, or prior order of the commissioner, the  
25 commissioner may order the company to take any action the  
26 commissioner considers necessary and appropriate to cure the  
27 violation.

1           "(2) An order rejecting the examination report with  
2 directions to the examiners to reopen the examination for  
3 purposes of obtaining additional data, documentation, or  
4 information, and refiling pursuant to subsection (a).

5           "(3) An order calling for an investigatory hearing  
6 with no less than 20 days' notice to the company for purposes  
7 of obtaining additional documentation, data, information, and  
8 testimony.

9           "(d) Orders entered pursuant to subdivision (1) of  
10 subsection (c) shall be accompanied by findings and  
11 conclusions resulting from the commissioner's consideration  
12 and review of the examination report, relevant examiner  
13 workpapers, and any written submissions or rebuttals. An order  
14 shall be considered a final administrative decision and shall  
15 be served upon the company by certified mail. The order may be  
16 appealed pursuant to Section 27-2-32.

17           "~~(b)~~(e) The examination report, when ~~so filed~~  
18 adopted, shall be admissible in evidence in any action or  
19 proceeding brought by the commissioner against the person  
20 examined, or against its officers, employees or agents. The  
21 commissioner or his examiners may, at any time, testify and  
22 offer other proper evidence as to information secured or  
23 matters discovered during the course of an examination,  
24 whether or not a written report of the examination has been  
25 either made, furnished, or filed in the department.

26           "~~(c)~~(f) (1) Upon the adoption of the examination  
27 report under subdivision (1) of subsection (c), the

1 commissioner shall hold the content of the examination report  
2 as private and confidential information for a period of 20  
3 days except to the extent provided in subsection (b).  
4 Thereafter, the commissioner may open the report for public  
5 inspection unless a court of competent jurisdiction has stayed  
6 its publication; however, The the commissioner may withhold  
7 from public inspection any examination or investigation report  
8 for so long as he the commissioner deems necessary to protect  
9 the person examined from unwarranted injury or to be in the  
10 public interest.

11 ~~"(d) After the examination report has been filed, as~~  
12 ~~provided in this section, the commissioner may publish the~~  
13 ~~results of any such examination in one or more newspapers~~  
14 ~~published in this state whenever he deems it to be in the~~  
15 ~~public interest.~~

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

26 "(3) In the event the commissioner determines that  
27 regulatory action is appropriate as a result of an

1 examination, the commissioner may initiate any proceedings or  
2 actions provided by law.

3 "(g) (1) Except as provided in subsection (f) and  
4 this subsection, documents, materials, or other information in  
5 the possession or control of the commissioner or the  
6 Department of Insurance, including, but not limited to, all  
7 working papers, and copies thereof, created, produced or  
8 obtained by, or disclosed to the commissioner or any other  
9 person in the course of an examination made under this  
10 chapter, or in the course of analysis by the commissioner of  
11 the financial condition or market conduct of a company, and  
12 documents or exhibits which contain information regarding the  
13 compensation of the officers or employees of a company as  
14 required by the instructions for annual statements filed in  
15 accordance with Section 27-3-26, 27-21A-8, 27-31-16, 27-34-36,  
16 or 10A-20-6.14, shall be confidential by law and privileged,  
17 shall not be subject to any open records, freedom of  
18 information, sunshine, or other public record disclosure laws,  
19 and shall not be subject to subpoena. However, the  
20 commissioner may use the documents, materials, or other  
21 information in the furtherance of any regulatory or legal  
22 action brought as part of the commissioner's official duties.

23 "(2) Documents, materials, or other information,  
24 including, but not limited to, all working papers, and copies  
25 thereof, in the possession or control of the NAIC shall be  
26 confidential by law and privileged, shall not be subject to  
27 any open records, freedom of information, sunshine, or other

1 public record disclosure laws, and shall not be subject to  
2 subpoena, if they are either of the following:

3 "a. Created, produced, or obtained by or disclosed  
4 to the NAIC in the course of the NAIC assisting an examination  
5 made under this chapter, or assisting a commissioner in the  
6 analysis of the financial condition or market conduct of a  
7 company.

8 "b. Disclosed to the NAIC under subdivision (4) by a  
9 commissioner.

10 "(3) Neither the commissioner nor any person who  
11 received the documents, material, or other information while  
12 acting under the authority of the commissioner, including the  
13 NAIC, shall be permitted to testify in any private civil  
14 action concerning any confidential documents, materials, or  
15 information subject to subdivision (2).

16 "(4) In order to assist in the performance of the  
17 commissioner's duties, the commissioner may do all of the  
18 following:

19 "a. Share documents, materials, or other  
20 information, including the confidential and privileged  
21 documents, materials, or information subject to subsection  
22 (f), with other state, federal, and international regulatory  
23 agencies, with the NAIC, and with state, federal, and  
24 international law enforcement authorities, provided that the  
25 recipient agrees to maintain the confidentiality and  
26 privileged status of the document, material, communication, or  
27 other information.



1           "b. Receive documents, materials, communications, or  
2 information, including otherwise confidential and privileged  
3 documents, materials, or information from the NAIC and from  
4 regulatory and law enforcement officials of other foreign or  
5 domestic jurisdictions. The commissioner shall maintain as  
6 confidential or privileged any document, material, or  
7 information received with notice or the understanding that it  
8 is confidential or privileged under the laws of the  
9 jurisdiction that is the source of the document, material, or  
10 information.

11           "c. Enter into written agreements governing sharing  
12 and use of information consistent with this subsection.

13           "(5) No waiver of any applicable privilege or claim  
14 of confidentiality in the documents, materials, or information  
15 shall occur as a result of disclosure to the commissioner  
16 under this section or as a result of sharing as authorized in  
17 subdivision (4).

18           "(6) For purposes of this subsection, NAIC shall  
19 mean the National Association of Insurance Commissioners and  
20 its affiliates and subsidiaries."

21           Section 2. All laws or parts of laws which conflict  
22 with this act are repealed.

23           Section 3. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Banking and Insurance..... 05-MAR-15

Read for the second time and placed on the calen-  
dar 1 amendment..... 18-MAR-15

Read for the third time and passed as amended .... 05-MAY-15

Yeas 30  
Nays 0

Patrick Harris  
Secretary