

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

1 SB147

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4 ENROLLED, An Act,

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

1 required by the instructions for annual statements,
2 confidential and privileged and provided they are not subject
3 to open records laws or subpoena; and to authorize the
4 commissioner to share the documents, material, and other
5 information with other state, federal, or international
6 regulatory agencies, with the NAIC, and with state, federal,
7 or international law enforcement authorities.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11 "§27-2-24.

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

1 ~~grant a hearing with respect to the report and shall not so~~
2 ~~file the report until after the hearing and after such~~
3 ~~modifications have been made therein as the commissioner deems~~
4 ~~proper.~~

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

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

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

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

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

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

1 thereto agrees in writing to hold it confidential and in a
2 manner consistent with this section.

3 "(3) In the event the commissioner determines that
4 regulatory action is appropriate as a result of an
5 examination, the commissioner may initiate any proceedings or
6 actions provided by law.

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

1 information in the furtherance of any regulatory or legal
2 action brought as part of the commissioner's official duties.

3 "(2) Documents, materials, or other information,
4 including, but not limited to, all working papers, and copies
5 thereof, in the possession or control of the NAIC shall be
6 confidential by law and privileged, shall not be subject to
7 any open records, freedom of information, sunshine, or other
8 public record disclosure laws, and shall not be subject to
9 subpoena, if they are either of the following:

10 "a. Created, produced, or obtained by or disclosed
11 to the NAIC in the course of the NAIC assisting an examination
12 made under this chapter, or assisting a commissioner in the
13 analysis of the financial condition or market conduct of a
14 company.

15 "b. Disclosed to the NAIC under subdivision (4) by a
16 commissioner.

17 "(3) Neither the commissioner nor any person who
18 received the documents, material, or other information while
19 acting under the authority of the commissioner, including the
20 NAIC, shall be permitted to testify in any private civil
21 action concerning any confidential documents, materials, or
22 information subject to subdivision (2).

23 "(4) In order to assist in the performance of the
24 commissioner's duties, the commissioner may do all of the
25 following:

1 "a. Share documents, materials, or other
2 information, including the confidential and privileged
3 documents, materials, or information subject to subsection
4 (f), with other state, federal, and international regulatory
5 agencies, with the NAIC, and with state, federal, and
6 international law enforcement authorities, provided that the
7 recipient agrees to maintain the confidentiality and
8 privileged status of the document, material, communication, or
9 other information.

10 "b. Receive documents, materials, communications, or
11 information, including otherwise confidential and privileged
12 documents, materials, or information from the NAIC and from
13 regulatory and law enforcement officials of other foreign or
14 domestic jurisdictions. The commissioner shall maintain as
15 confidential or privileged any document, material, or
16 information received with notice or the understanding that it
17 is confidential or privileged under the laws of the
18 jurisdiction that is the source of the document, material, or
19 information.

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

22 "(5) No waiver of any applicable privilege or claim
23 of confidentiality in the documents, materials, or information
24 shall occur as a result of disclosure to the commissioner

1 under this section or as a result of sharing as authorized in
2 subdivision (4).

3 "(6) For purposes of this subsection, NAIC shall
4 mean the National Association of Insurance Commissioners and
5 its affiliates and subsidiaries."

6 Section 2. All laws or parts of laws which conflict
7 with this act are repealed.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB147

Senate 05-MAY-15

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 19-MAY-15

By: Senator Blackwell