

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

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8 SYNOPSIS: Under existing law, the examiners of the
9 Department of Insurance prepare an examination
10 report based on the information gathered in an
11 examination of the records of the insurer. Upon the
12 filing of an examination report, the insurer has 20
13 days to file a request for a hearing regarding the
14 report. The Commissioner of Insurance may withhold
15 the report from public inspection for as long as
16 necessary to protect the insurer examined from
17 unwarranted injury or in the public interest, and
18 thereafter, the commissioner may publish the
19 results of the examination.

20 This bill would require the examiner to file
21 a verified report of examination of an insurer
22 within 60 days of completion of an examination and
23 would allow the insurer 30 days to file a rebuttal.
24 Thereafter, the commissioner would be authorized to
25 adopt the report or to reject the report with
26 direction to reopen the examination or the
27 commissioner may call for a hearing.

1 This bill would further require the
2 commissioner to hold the content of an examination
3 as private and confidential for a period of 20 days
4 and thereafter make the report open for public
5 inspection with certain exceptions.

6 This bill would further require the
7 commissioner to hold all documents, material, or
8 other information created, produced, or obtained by
9 or disclosed to the commissioner in the course of
10 the examination or in the course of the analysis by
11 the commissioner of the financial condition or
12 market conduct of the insurer confidential and
13 privileged and provided they are not subject to
14 open records laws and not subject to subpoena,
15 except that the commissioner may share the
16 documents, material, and other information with
17 other state, federal, or international regulatory
18 agencies, with the National Association of
19 Insurance Commissioners (NAIC), and with state,
20 federal, or international law enforcement
21 authorities.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
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1 Relating to insurance regulation by the Department
2 of Insurance; to amend Section 27-2-24, Code of Alabama 1975;
3 to provide procedures for reports of examination of insurance
4 companies consistent with the model act developed by the
5 National Association of Insurance Commissioners; to require an
6 examiner to file a verified report of examination within 60
7 days of completion of an examination; to allow the insurer 30
8 days to file a rebuttal, after which time the Commissioner of
9 Insurance could order the adoption of the report or the
10 rejection of the report with direction to reopen the
11 examination or call for a hearing; to require the commissioner
12 to hold the content of an examination as private and
13 confidential for a certain period and thereafter make the
14 report open for public inspection, with certain exceptions; to
15 require the commissioner to hold all documents, material, or
16 other information created, produced, or obtained by or
17 disclosed to the commissioner in the course of the examination
18 or in the course of the analysis by the commissioner of the
19 financial condition or market conduct of the insurer
20 confidential and privileged and provided they are not subject
21 to open records laws or subpoena; and to authorize the
22 commissioner to share the documents, material, and other
23 information with other state, federal, or international
24 regulatory agencies, with the NAIC, and with state, federal,
25 or international law enforcement authorities.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

3 "§27-2-24.

4 "(a) The commissioner, or his or her examiner, shall
5 make a full and true written report of each examination. The
6 examination report shall contain only information obtained
7 from examination of the books, records, accounts, files, and
8 or other documents of, or relative to, the person examined,
9 its agents or other persons examined, or as ascertained from
10 the testimony of individuals under oath its officers or agents
11 or other persons examined concerning its affairs, together
12 with conclusions and recommendations of as the examiner based
13 thereon examiners find reasonable warranted from the facts.
14 ~~The commissioner shall furnish a copy of the proposed report~~
15 ~~to the person examined not less than 20 days prior to filing~~
16 ~~the report in his office. If such person so requests in~~
17 ~~writing within such 20-day period, the commissioner shall~~
18 ~~grant a hearing with respect to the report and shall not so~~
19 ~~file the report until after the hearing and after such~~
20 ~~modifications have been made therein as the commissioner deems~~
21 ~~proper.~~

22 "(b) No later than 60 days following completion of
23 the examination, the examiner in charge shall file with the
24 department a verified written report of examination under
25 oath. Upon receipt of the verified report, the department
26 shall transmit the report to the company examined, together
27 with a notice that the company examined may make a written

1 submission or rebuttal with respect to any matter contained in
2 the examination report within 30 days thereafter.

3 "(c) Within 30 days of the end of the period allowed
4 for the receipt of written submissions or rebuttals, the
5 commissioner shall fully consider and review the report,
6 together with any written submissions or rebuttals and any
7 relevant portions of the examiner's workpapers and enter one
8 of the following:

9 "(1) An order adopting the examination report as
10 filed or with modifications or corrections. If the examination
11 report reveals that the company is operating in violation of
12 any law, regulation, or prior order of the commissioner, the
13 commissioner may order the company to take any action the
14 commissioner considers necessary and appropriate to cure the
15 violation.

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

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

24 "(d) Orders entered pursuant to subdivision (1) of
25 subsection (c) shall be accompanied by findings and
26 conclusions resulting from the commissioner's consideration
27 and review of the examination report, relevant examiner

1 workpapers, and any written submissions or rebuttals. An order
2 shall be considered a final administrative decision and shall
3 be served upon the company by certified mail. The order may be
4 appealed pursuant to Section 27-2-32.

5 ~~"(b)(e)~~ The examination report, when ~~so filed~~
6 adopted, shall be admissible in evidence in any action or
7 proceeding brought by the commissioner against the person
8 examined, or against its officers, employees or agents. The
9 commissioner or his examiners may, at any time, testify and
10 offer other proper evidence as to information secured or
11 matters discovered during the course of an examination,
12 whether or not a written report of the examination has been
13 either made, furnished, or filed in the department.

14 ~~"(c)(f)(1)~~ Upon the adoption of the examination
15 report under subdivision (1) of subsection (c), the
16 commissioner shall hold the content of the examination report
17 as private and confidential information for a period of 20
18 days except to the extent provided in subsection (b).
19 Thereafter, the commissioner may open the report for public
20 inspection unless a court of competent jurisdiction has stayed
21 its publication; however, The the commissioner may withhold
22 from public inspection any examination or investigation report
23 for so long as he the commissioner deems necessary to protect
24 the person examined from unwarranted injury or to be in the
25 public interest.

26 ~~"(d) After the examination report has been filed, as~~
27 ~~provided in this section, the commissioner may publish the~~

1 ~~results of any such examination in one or more newspapers~~
2 ~~published in this state whenever he deems it to be in the~~
3 ~~public interest.~~

4 "(2) Nothing contained in this section shall prevent
5 or be construed as prohibiting the commissioner from
6 disclosing the content of an examination report, preliminary
7 examination report or results, or any matter relating thereto,
8 to the insurance department of any other state or country, or
9 to law enforcement officials of this or any other state or
10 agency of the federal government at any time, so long as the
11 agency or office receiving the report or matters relating
12 thereto agrees in writing to hold it confidential and in a
13 manner consistent with this section.

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

18 "(g) (1) Except as provided in subsection (f) and
19 this subsection, documents, materials, or other information,
20 including, but not limited to, all working papers, and copies
21 thereof, created, produced or obtained by, or disclosed to the
22 commissioner or any other person in the course of an
23 examination made under this chapter, or in the course of
24 analysis by the commissioner of the financial condition or
25 market conduct of a company shall be confidential by law and
26 privileged, shall not be subject to any open records, freedom
27 of information, sunshine, or other public record disclosure

1 laws, and shall not be subject to subpoena. However, the
2 commissioner may use the documents, materials, or other
3 information in the furtherance of any regulatory or legal
4 action brought as part of the commissioner's official duties.

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

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

17 "b. Disclosed to the NAIC under subdivision (4) by a
18 commissioner.

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

25 "(4) In order to assist in the performance of the
26 commissioner's duties, the commissioner may do all of the
27 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
25 under this section or as a result of sharing as authorized in
26 subdivision (4).

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

4 Section 2. All laws or parts of laws which conflict
5 with this act are repealed.

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