

1 HB37  
2 164041-2  
3 By Representative Hill (M)  
4 RFD: Insurance  
5 First Read: 03-MAR-15  
6 PFD: 02/18/2015

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  
26

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.