

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 321*
Insurance and Consumer Protection Committee Substitute Adopted 4/23/01

Short Title: Insurance Exam Law Amendments.

(Public)

Sponsors:

Referred to:

March 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR SHARING OF INFORMATION PRODUCED BY,
OBTAINED BY, OR DISCLOSED TO THE INSURANCE COMMISSIONER
UNDER THE EXAMINATION LAW; AND TO CLARIFY THAT THE
EXAMINATION LAW APPLIES TO ALL ENTITIES SUBJECT TO
REGULATION BY THE INSURANCE COMMISSIONER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-2-131(d) reads as rewritten:

"(d) The Commissioner may conduct an examination of any ~~insurer~~entity whenever the Commissioner deems it to be prudent for the protection of policyholders or the public, but shall at a minimum conduct a regular examination of every domestic insurer not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook."

SECTION 2. G.S. 58-2-131(e) reads as rewritten:

"(e) To complete an examination of any ~~insurer~~, entity, the Commissioner may authorize an examination or investigation of any person, or the business of any person, insofar as the examination or investigation is necessary or material to the ~~insurer~~entity under examination."

SECTION 3. G.S. 58-2-131(1) reads as rewritten:

"(l) Pending, during, and after the examination of any ~~insurer~~ entity, the Commissioner shall not make public the financial statement, findings, or examination report, or any report affecting the status or standing of the ~~insurer~~entity examined, until the ~~insurer~~entity examined has either accepted and approved the final examination report or has been given a reasonable opportunity to be heard on the report and to answer or rebut any statements or findings in the report. The hearing, if requested, shall be informal and private."

1 **SECTION 4.** G.S. 58-2-132 reads as rewritten:

2 "**§ 58-2-132. Examination reports.**

3 (a) All examination reports shall comprise only facts appearing upon the books,
4 records, or other documents of the ~~insurer~~, entity, its agents or other persons examined,
5 or as ascertained from the testimony of its officers or agents or other persons examined
6 concerning its affairs, and conclusions and recommendations that the examiners find
7 reasonably warranted from the facts.

8 (b) No later than 60 days following completion of an examination, the examiners
9 shall file with the Department a verified written examination report under oath. Upon
10 receipt of the verified report, the Department shall send the report to the ~~insurer~~-entity
11 examined, together with a notice that affords the ~~insurer~~ entity examined a reasonable
12 opportunity of not more than 30 days to make a written submission or rebuttal with
13 respect to any matters contained in the examination report. Within 30 days ~~of~~-after the
14 date of the examination report, the ~~insurer~~ entity examined shall file affidavits executed
15 by each of its directors stating under oath that they have received and read a copy of the
16 report.

17 (c) At the end of the 30 days provided for the receipt of written submissions or
18 rebuttals, the Commissioner shall fully consider and review the report, together with any
19 written submissions or rebuttals and any relevant parts of the examiners' work papers
20 and enter an order:

21 (1) Adopting the examination report as filed or with modifications or
22 corrections. If the examination report reveals that the ~~insurer~~-entity
23 examined is operating in violation of any law, rule, or prior order of
24 the Commissioner, the Commissioner may order the ~~insurer~~-entity
25 examined to take any action the Commissioner considers necessary
26 and appropriate to cure the violation; or

27 (2) Rejecting the examination report with directions to the examiners to
28 reopen the examination to obtain additional data, documentation of the
29 information, and refile under subdivision (1) of this subsection; or

30 (3) Calling for an investigatory hearing with no less than 20 days' notice to
31 the insurer for purposes of obtaining additional documentation, data,
32 and testimony.

33 (d) All orders entered under subdivision (c)(1) of this section shall be
34 accompanied by findings and conclusions resulting from the Commissioner's
35 consideration and review of the examination report, relevant examiner work papers, and
36 any written submissions or rebuttals. Any such order shall be considered a final
37 administration decision and shall be served upon the ~~insurer~~-entity examined by
38 certified mail. Any hearing conducted under subdivision (c)(3) of this section shall be
39 conducted as a nonadversarial confidential investigatory proceeding as necessary for the
40 resolution of any inconsistencies, discrepancies, or disputed issues apparent on the face
41 of the filed examination report or raised by or as a result of the Commissioner's review
42 of relevant work papers or by the written submission or rebuttal of the ~~insurer~~-entity
43 examined. Within 20 days after the conclusion of any such hearing, the Commissioner

1 shall enter an order under subdivision (c)(1) of this section. The Commissioner may not
2 appoint a member of the Department's examination staff as an authorized representative
3 to conduct the hearing. The hearing shall proceed expeditiously with discovery by the
4 ~~insurer entity examined~~ limited to the examiner's work papers that tend to substantiate
5 any assertions set forth in any written submission or rebuttal. The Commissioner may
6 issue subpoenas for the attendance of any witnesses or the production of any documents
7 the Commissioner considers to be relevant to the investigation, whether they are under
8 the control of the Department, the ~~insurer, entity examined,~~ or other persons. The
9 documents produced shall be included in the record, and testimony taken by the
10 Commissioner shall be under oath and preserved for the record. Nothing in this section
11 requires the Department to disclose any information or records that would show the
12 existence or content of any investigation or activity of any federal or state criminal
13 justice agency. In the hearing, the Commissioner shall question the persons subpoenaed.
14 Thereafter the ~~insurer entity examined~~ and the Department may present testimony
15 relevant to the investigation. Cross-examination shall be conducted only by the
16 Commissioner. The ~~insurer entity examined~~ and the Department may make closing
17 statements and may be represented by counsel of their choice.

18 (e) Upon completion of the examination report under subdivision (c)(1) of this
19 section, the Commissioner shall hold the content of the examination report as private
20 and confidential information for the 30-day period provided for written submissions or
21 rebuttals. If after 30 days after the examination report has been submitted to it, the
22 ~~insurer entity~~ examined has neither notified the Commissioner of its acceptance and
23 approval of the report nor requested to be heard on the report, the report shall then be
24 filed as a public document and shall be open to public inspection, as long as no court of
25 competent jurisdiction has stayed its publication. Nothing in the Examination Law
26 prohibits the Commissioner from disclosing the content of the examination report,
27 preliminary examination report or results, or any related matter, to an insurance
28 regulator or to law enforcement officials of this or any other state or country or of the
29 United States government at any time, as long as the person or agency receiving the
30 report or related matters agrees in writing and is authorized by law to hold it
31 confidential and in a manner consistent with this section. If the Commissioner
32 determines that further regulatory action is appropriate as a result of any examination,
33 the Commissioner may initiate such proceedings or actions as provided by law.

34 (f) All working papers, ~~recorded~~ information, documents, and copies thereof
35 produced by, obtained by, or disclosed to the Commissioner or any other person ~~during~~
36 in connection with an examination or financial analysis shall be given confidential
37 ~~treatment and is treatment,~~ are not subject to ~~subpoena-subpoena,~~ and ~~may shall~~ not be
38 made public by the Commissioner or any other person, ~~except to the extent provided in~~
39 ~~G.S. 58-2-131(l) or subsection (e) of this section.~~ person. ~~Access may also be granted to~~
40 ~~the NAIC. Such parties must agree in writing before receiving the information to give it~~
41 ~~the same confidential treatment as this section requires, unless the prior written consent~~
42 ~~of the insurer to which it pertains has been obtained. The provisions of this section do~~
43 ~~not prohibit the Commissioner from taking any action provided for, or from exercising~~

1 ~~any power conferred by, any provision of this Chapter to suspend or revoke the license~~
2 ~~of any insurer. The Commissioner may use the documents, materials, or other~~
3 ~~information in the furtherance of any regulatory or legal action brought as part of the~~
4 ~~Commissioner's official duties.~~

5 (g) In order to assist in the performance of the Commissioner's duties, the
6 Commissioner may:

7 (1) Share documents, materials, or other information, including the
8 confidential and privileged documents, materials, or information
9 subject to subsection (f) of this section, with other state, federal, and
10 international regulatory agencies, with the NAIC, and with state,
11 federal, and international law enforcement authorities, provided that
12 the recipient agrees to maintain the confidentiality and privileged
13 status of the document, material, communication, or other information.

14 (2) Receive documents, materials, communications, or information,
15 including otherwise confidential and privileged documents, materials,
16 or information, from the NAIC, and from regulatory and law
17 enforcement officials of other foreign or domestic jurisdictions, and
18 shall maintain as confidential or privileged any document, material, or
19 information received with notice or the understanding that it is
20 confidential or privileged under the laws of the jurisdiction that is the
21 source of the document, material, or information.

22 (3) Enter into agreements governing sharing and use of information
23 consistent with this section.

24 (h) No waiver of an existing privilege or claim of confidentiality in the
25 documents, materials, or information shall occur as a result of disclosure to the
26 Commissioner under this section or as a result of sharing as authorized in subsection (g)
27 of this section.

28 (i) A privilege established under the law of any state or jurisdiction that is
29 substantially similar to the privilege established under this section shall be available and
30 enforced in any proceeding in, and in any court of, this State.

31 (j) In this section, 'department,' 'insurance regulator,' 'law enforcement official or
32 authority,' 'NAIC,' and 'regulatory official or agency' include employees, agents,
33 consultants, and contractors of those entities.'

34 **SECTION 5.** If any section or provision of this act is declared
35 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
36 validity of the act as a whole or any part other than the part so declared to be
37 unconstitutional, preempted, or otherwise invalid.

38 **SECTION 6.** This act is effective when it becomes law.