

1 HB77
2 125435-1
3 By Representatives Wren, Canfield, Brown and Faust
4 RFD: Insurance
5 First Read: 01-MAR-11

2
3
4
5
6
7
8 SYNOPSIS: Existing law does not allow the Commissioner
9 of the Alabama Department of Insurance or his or
10 her designee to collect market conduct annual
11 statement data for analysis purposes from insurers.

12 This bill would allow the Commissioner of
13 the Alabama Department of Insurance or his or her
14 designee to collect market conduct annual statement
15 data for analysis purposes from insurers.

16 This bill would provide the procedures for
17 and set forth the method for collecting and sharing
18 market conduct annual statement information.

19 This bill would provide for the submission
20 and collection of market conduct annual statement
21 information.

22 This bill would provide for the review and
23 analysis of market conduct annual statement data.

24 This bill would provide for the selection
25 and standards for designees of the commissioner.

1 This bill would provide for the
2 confidentiality of market conduct annual statement
3 data, analysis, and reports.

4 This bill would provide for the sharing of
5 the market conduct annual statement data and
6 analysis.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 Relating to insurers; to allow the Commissioner of
13 the Alabama Department of Insurance or his or her designee to
14 collect market conduct annual statement data for analysis
15 purposes from insurers; to provide the procedures for and set
16 forth the method for collecting and sharing market conduct
17 annual statement information; to provide for the submission
18 and collection of market conduct annual statement information;
19 to provide for the review and analysis of market conduct
20 annual statement data; to provide for the selection and
21 standards for designees of the commissioner; to provide for
22 the confidentiality of market conduct annual statement data,
23 analysis, and reports; and to provide for the sharing of the
24 market conduct annual statement data and analysis.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. This act shall be known as and may be
27 cited as the Market Conduct Annual Statement Act.

1 Section 2. As used in this act, the following words
2 shall have the following meanings:

3 (1) COMMISSIONER. The Commissioner of the Alabama
4 Department of Insurance.

5 (2) DESIGNEE. An entity that meets the requirements
6 under this act serving as a market conduct annual statement
7 statistical agent whom the commissioner designates under
8 subsection (c) of Section 5 or a qualified professional
9 organization or person designated by the commissioner pursuant
10 to subsection (b) of Section 6.

11 (3) INSURER. An admitted insurance company subject
12 to the scope of this act as set forth in Section 3 and to
13 filing submission under subsection (b) of Section 5.

14 (4) MARKET ANALYSIS. A process where market conduct
15 surveillance personnel collect and analyze information from
16 filed schedules, surveys, required reports, and other sources
17 in order to develop a baseline and to identify patterns or
18 practices of insurers licensed to do business in this state
19 pertaining to company operations and management, complaint
20 handling, marketing and sales, producer licensing,
21 policyholder services, underwriting, and claims. The analysis
22 may include, but is not limited to, practices that may pose a
23 potential risk to the insurance consumer. The market analysis
24 does not represent standards for market behavior and does not
25 establish compliance or non-compliance.

26 (5) MARKET CONDUCT ANNUAL STATEMENT. The market
27 conduct annual statement as approved by the National

1 Association of Insurance Commissioners and as amended by the
2 commission in accordance with the established procedures of
3 the association, if the market conduct annual statement and
4 any changes to the statement have been adopted as law in this
5 state or have been recommended by the commissioner and
6 approved pursuant to the Alabama Administrative Procedure Act.

7 (6) MARKET CONDUCT ANNUAL STATEMENT DATA. The
8 information and documents required by a market conduct annual
9 statement and filed by insurers pursuant to this act.

10 (7) MARKET CONDUCT ANNUAL STATEMENT STATISTICAL
11 AGENT. An entity that has been designated by the commissioner
12 to collect statistics from insurers and provide reports
13 developed from these statistics to the commissioner for the
14 purpose of fulfilling the market conduct annual statement
15 obligations of those insurers.

16 Section 3. The Legislature hereby finds and declares
17 that the purpose of this act is to enable the commissioner to
18 collect market conduct annual statement data for analysis
19 purposes. The procedures set forth under this act shall be the
20 exclusive method for collecting and sharing market conduct
21 annual statement information.

22 Section 4. This act applies to admitted insurers
23 with direct written premium exceeding one hundred thousand
24 dollars (\$100,000) in lines of business subject to the market
25 conduct annual statement of the National Association of
26 Insurance Commissioners.

1 Section 5. (a) The commissioner may annually gather
2 market conduct annual statement data pursuant to the law of
3 this state. To allow insurers time to prepare to submit the
4 information required, the commissioner, or his or her market
5 conduct annual statement statistical agent, shall provide
6 advance notice to insurers. For information the insurer
7 presently has, the commissioner, or his or her market conduct
8 annual statement statistical agent, shall notify the insurers
9 before July of the preceding year of the market conduct annual
10 statement data to be submitted. For information that the
11 insurer does not presently collect, the commissioner, or his
12 or her market conduct annual statement statistical agent,
13 shall notify the insurer before the July reporting date, two
14 years preceding the year the market conduct annual statement
15 data is to be submitted.

16 (b) If the commissioner decides to gather market
17 conduct annual statement data, every insurer shall annually
18 file with the commissioner, or his or her designated market
19 conduct annual statement statistical agent, market conduct
20 annual statement data for each applicable line of business
21 which it writes more than one hundred thousand dollars
22 (\$100,000) in direct written premium. If the commissioner
23 determines either that he or she is not using market conduct
24 annual statement data or that he or she does not need to
25 review the information each year, he or she may suspend some
26 or all of the filing requirements or reduce the frequency of

1 the filing requirement for a line of business or for insurers
2 meeting a requirement specified by the commissioner.

3 (c) The commissioner may approve and designate one
4 or more market conduct annual statement statistical agents for
5 the purpose of gathering, compiling, aggregating, and
6 reporting to the commissioner the market conduct annual
7 statement statistical data. The commissioner may also direct
8 the designee to perform statistical activities related to the
9 receipt and presentation of market conduct annual statement
10 data to assist the commissioner in the review and subsequent
11 analysis of market conduct annual statement data. Not more
12 than one market conduct annual statement statistical agent may
13 be designated for each line of business that is subject to
14 market conduct annual statement. The designation of a market
15 conduct annual statement statistical agent by the commissioner
16 may not mean that admitted insurers shall report to the agent
17 any market conduct annual statement statistics other than
18 those statistics required to be reported under this section.

19 (d) The designation shall be made pursuant to
20 written contract, and subject to the provisions of this act.
21 The written contract which terms shall include the scope of
22 work, including all provisions relating to compensation and
23 costs, shall be a public record of the commissioner.

24 (e) A designee may not use the market conduct annual
25 statement data or any related analysis or other information,
26 including any analysis or other information created or
27 produced by the designee for any other purpose.

1 Section 6. (a) The commissioner may review market
2 conduct annual statement data for the purpose of market
3 analysis.

4 (b) The commissioner may designate in accordance
5 with applicable state contracting procedures a qualified
6 professional organization or person outside the department to
7 assist in the analysis and reporting of market conduct annual
8 statement data subject to the confidentiality and sharing
9 provisions in this act. The designated entity or person may
10 not use the information collected for any purpose other than
11 as stated in this act and as within the scope of this
12 designation.

13 Section 7. (a) A designee may not charge more than
14 reasonable and necessary costs or fees or both. The
15 commissioner or an insurer may request that a designee provide
16 an accounting or itemized invoices or both.

17 (b) The provisions of this act may not be construed
18 to prevent an organization or person from providing services
19 under both Sections 5 and 6 if the organization or person is
20 qualified for both functions and agrees to the terms and
21 conditions set forth in this section.

22 (c) The designee shall be the agent for the
23 commissioner and not for a reporting insurer.

24 (d) The commissioner may only approve or hire a
25 designee under subsection (c) of Section (5) and subsection
26 (b) of Section 6 if he or she ensures that the functions of

1 the designee are conducted by qualified organizations or
2 persons in accordance with all of the following procedures:

3 (1) To be selected as a designee under this act an
4 applicant shall:

5 a. Follow the procedure the commissioner outlines
6 for consideration to serve as a designee, which may include
7 licensing, a written application, or a formal request for a
8 designation.

9 b. State the qualification of the applicant whether
10 by education, experience, and where appropriate, professional
11 designations, to act in the capacity for which it seeks
12 designation.

13 c. State the record of the applicant with respect to
14 maintaining compliance, data security, and confidentiality.

15 d. State that the applicant does not have an ongoing
16 conflict of interest.

17 e. Agree in writing to do all of the following:

18 1. Comply with the all rules, technical advisories,
19 and directives issued by the commissioner.

20 2. Report statistical data or provide analysis of
21 that data to the commissioner in a timely manner.

22 3. Submit to an audit or performance review, as
23 required by the commissioner.

24 4. Make continuing efforts to resolve data quality
25 and integrity issues, by working with insurance regulators and
26 insurers on consistent definitions, ratios, interpretations,

1 and protocols, as appropriate for the size and scope of the
2 designation.

3 5. Maintain the confidentiality and any applicable
4 privilege of all data.

5 6. Enter into an agreement, consistent with this
6 act, with each insurer.

7 7. Implement appropriate measures to establish
8 standards for developing and implementing administrative,
9 technical, and physical safeguards to protect the security,
10 confidentiality, and integrity of information.

11 f. For selection as a market conduct annual
12 statement statistical agent, submit a reporting plan that
13 conforms to the market conduct annual statement reporting
14 format approved by the National Association of Insurance
15 Commissioners adopted by the laws of this state and approved
16 by the commissioner.

17 (2) A designee may collect and maintain the market
18 conduct annual statement data on behalf of the commissioner
19 however the designee may own the information and nor shall the
20 designee make the information available to any other person or
21 entity except in accordance with this act.

22 Section 8. (a) Market conduct annual statement data,
23 the work papers and any analysis or other information produced
24 by a designee, including the work papers and any analysis or
25 other information produced by or received from another
26 governmental entity or the National Association of Insurance
27 Commissioners, and the review and analysis of market conduct

1 annual statement data of the commissioner, is confidential and
2 privileged. It shall be afforded no less protection than
3 materials provided under the examination and investigation
4 authority of the commissioner as provided by law or
5 administrative rule and may not be subject to subpoena or to
6 discovery; or admissible in evidence in a private civil
7 action; and shall be exempt from any applicable freedom of
8 information law, public records law, public records disclosure
9 law, or other similar statute.

10 (b) A person or entity which receives or has access
11 to market conduct annual statement data, materials, or other
12 related information may not be permitted or required to
13 testify in a private civil action concerning the market
14 conduct annual statement data, materials, or other
15 information.

16 (c) Within three business days after receipt by a
17 designee, or any other recipient of market conduct annual
18 statement, market conduct annual statement data, or related
19 information, of a subpoena or request for discovery of market
20 conduct annual statement data, related analysis, or other
21 related information submitted by or pertaining to a specific
22 insurer, the designee shall notify the commissioner and the
23 insurer of the subpoena or request for data. An insurer shall
24 have the right to intervene and to assert privileges under
25 this act and any other law, or to commence an action to do any
26 of the following:

1 (1) Prevent disclosure of any market conduct annual
2 statement data provided by it unless the disclosure will be
3 made pursuant to a regulatory action to which the information
4 is or may be relevant.

5 (2) Recover damages for the disclosure to any person
6 or entity not authorized to receive the information, including
7 costs associated with an unauthorized disclosure or security
8 breach as well as other costs contained in an agreement under
9 subsection (f) of this section, unless that person or entity
10 is the subject of a legal or regulatory action to which the
11 information is or may be relevant.

12 (d) The waiver of an applicable privilege or a claim
13 of confidentiality in the documents, materials, or other
14 information may not occur as a result of disclosure to the
15 commissioner or his or her designee under this section or as a
16 result of sharing the documents, materials, or other
17 information as provided in this act. This section may not be
18 construed to require an insurer to disclose documents,
19 materials, or other information that is not otherwise required
20 by law to be disclosed.

21 (e) The making, publishing, disseminating,
22 circulating, or placing before the public, or causing,
23 directly or indirectly to be made, published, disseminated,
24 circulated, or placed before the public, any market conduct
25 annual statement data provided to a designee under this act is
26 prohibited.

1 (f) Consistent with this act, a designee or other
2 third party with whom market conduct annual statement data is
3 shared shall enter into an agreement with each insurer. The
4 agreement shall include, but is not limited to, language
5 addressing the following:

6 (1) Protections contained in this act.

7 (2) Data security safeguards and liability for
8 damages due to unauthorized release of insurer data.

9 (3) Prohibition against release of data to any third
10 party, unless the insurer is provided advance written notice
11 of the identity of the third party to whom the information
12 would be released and unless the third party agrees on the
13 same terms outlined in this subsection.

14 (g) This section may not be construed to prohibit an
15 insurer from making information about its operations public.

16 Section 9. (a) In accordance with the purpose of
17 this act the commissioner, or his or her designee, with the
18 express consent of the commissioner may do any of the
19 following:

20 (1) Share market conduct annual statement data
21 gathered under this act, as well as any analysis of that
22 information, with the following authorized recipients: State,
23 federal, and international regulatory agencies or law
24 enforcement authorities; provided that the recipient has a
25 reasonable need to review the information, and that the
26 recipient agrees, and has the legal authority, to maintain the
27 confidentiality and privileged status of the documents,

1 materials, or other information, including any analysis of the
2 information.

3 (2) The National Association of Insurance
4 Commissioners, if the association maintains the
5 confidentiality and privileged status of the documents,
6 materials, or other information, including any analysis of
7 information, as contained in written agreements with the
8 commissioner, consistent with this act, including subsection
9 (f) of Section 8.

10 (b) Receive market conduct annual statement data and
11 related analysis, documents, materials, or other information,
12 including otherwise confidential and privileged analysis,
13 documents, materials, or other information, from the National
14 Association of Insurance Commissioners, other state and
15 federal and international regulatory agencies, and law
16 enforcement authorities, and shall maintain as privileged and
17 confidential the analysis, documents, materials, or other
18 information, and may enter into agreements governing the
19 sharing and use consistent with this act.

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