

Regular Session, 2010

SENATE BILL NO. 676

BY SENATOR HEBERT

INSURANCE RATES. Provide for financial and market analysis of insurers and regulated entities by the commissioner of insurance. (8/15/10)

1 AN ACT
2 To amend and reenact R.S. 22:1984 and R.S. 44:4.1(B)(10), relative to examination and
3 investigation of insurers and regulated entities; to provide for financial and market analysis
4 of insurers and regulated entities; to provide for penalties; to provide for confidentiality; to
5 provide for standards and procedures; and to provide for related matters.
6 Be it enacted by the Legislature of Louisiana:
7 Section 1. R.S. 22:1984 is hereby amended and reenacted to read as follows:
8 §1984. Commissioner of insurance to conduct ~~annual office review~~ **financial and**
9 **market analysis** of insurers **and regulated entities**
10 A. In addition to those examinations performed by the commissioner of
11 insurance pursuant to R.S. 22:1981, the commissioner of insurance shall conduct ~~an~~
12 ~~annual office~~ **financial and market analysis** review of all insurers authorized to do
13 business in this state, ~~other than life, health, and accident insurers and nonprofit~~
14 ~~funeral associations~~ **and may conduct regulatory reviews of entities regulated by**
15 **Title 22 or the Department of Insurance except for trusts established and**
16 **operated under R.S. 22:46(9)(b),(c), or (d).** Such ~~office~~ reviews shall ~~shall~~ **may** include
17 the annual statement **and the market conduct annual statement** of the insurer **or**

1 **regulated entity** reviewed, company financial reports rendered pursuant to good and
2 acceptable accounting practices, results of insurance solvency standards testing as
3 performed by the National Association of Insurance Commissioners, results of prior
4 examinations and office reviews, management changes, consumer complaints, and
5 such other relevant information as from time to time may be required by the
6 commissioner.

7 **B. In lieu of conducting a financial or market analysis under this Section**
8 **of any foreign or alien insurer licensed in this state, the commissioner may rely**
9 **upon the financial or market analysis conducted by the insurance department**
10 **for the company's state of domicile or port-of-entry state accredited under the**
11 **National Association of Insurance Commissioners' Financial Regulation**
12 **Standards and Accreditation Program.** ~~The commissioner shall timely furnish to~~
13 ~~each reviewed insurer a written report detailing the findings of each such annual~~
14 ~~review. Within forty-five days of its receipt of such written report, each reviewed~~
15 ~~insurer shall provide to the commissioner such response, rebuttal, explanation, or~~
16 ~~other information as it may see fit. The commissioner shall furnish to any person,~~
17 ~~upon request, a copy of the written report, accompanied by a copy of the response,~~
18 ~~rebuttal, explanation, or other information provided by the reviewed insurer.~~

19 **C. Failure by an insurer or regulated entity to supply information**
20 **requested by the Department of Insurance during the course of financial or**
21 **market analysis may subject the insurer or regulated entity to revocation or**
22 **suspension of its license, or, in lieu thereof, a fine not to exceed ten thousand**
23 **dollars per occurrence. Every insurer or regulated entity shall produce and**
24 **make freely accessible to the commissioner of insurance the accounts, records,**
25 **documents and files in its possession or control.**

26 **D. All working papers, recorded information, documents, and copies**
27 **thereof produced by, obtained by, or disclosed to the commissioner, or any**
28 **other person in the course of conducting a regulatory review, financial, or**
29 **market analysis, including market conduct annual statement information,**

1 performed under this Section, as well as the review and analysis of such
2 information, shall be given confidential treatment and are not subject to
3 subpoena or to discovery and may not be made public by the commissioner or
4 any other person, except that access may be granted to the National Association
5 of Insurance Commissioners, insurance department of other states,
6 international, federal, or state law enforcement agencies or international,
7 federal, or state regulatory agencies with statutory oversight over the financial
8 services industry, if the recipient agrees to maintain the confidentiality of those
9 documents which are confidential under the laws of this state. Any documents,
10 materials, or other information which are disclosed by the commissioner to a
11 third party shall not be admissible in evidence in a private civil action and shall
12 be exempt from any applicable freedom of information law, public records law,
13 or similar statute. No person or entity which receives or has access to
14 documents, materials, or other information under this Section shall be
15 permitted or required to testify in a private civil action concerning such
16 documents, materials, or other information. No waiver of an applicable
17 privilege or a claim of confidentiality in the documents, materials, or other
18 information shall occur as a result of disclosure to the commissioner or to
19 someone else granted access under this Section as a result of sharing such
20 documents, materials or other information as provided in this Section. Nothing
21 in this Section shall require an insurer to disclose documents, materials, or
22 other information to a third party that is not otherwise required by law to be
23 disclosed.

24 E. In conducting financial or market analysis, the examiner or
25 examiners shall observe those guidelines and procedures set forth in the
26 *Financial Analysis Handbook* or *Market Regulation Handbook* adopted by the
27 National Association of Insurance Commissioners. The commissioner may also
28 employ such other guidelines or procedures as the commissioner may deem
29 appropriate.

1 **F. Nothing contained in this Chapter shall be construed to limit the**
2 **commissioner's authority to use any final or preliminary analysis findings, any**
3 **Department of Insurance or company work papers or other documents, or any**
4 **other information discovered or developed during the course of any analysis in**
5 **the furtherance of any legal or regulatory action which the commissioner may,**
6 **in his sole discretion, deem appropriate.**

7 **G. Any insurer or regulated entity against whom a fine has been levied**
8 **shall be given thirty days notice of such action. Upon receipt of this notice, the**
9 **aggrieved insurer or regulated entity may apply for and shall be entitled to a**
10 **hearing pursuant to R.S. 22:2191, et seq.**

11 Section 2. R.S. 44:4.1(B)(10) is hereby amended and reenacted to read as follows:

12 §44:4.1. Exceptions

13 * * *

14 B. The legislature further recognizes that there exist exceptions, exemptions,
15 and limitations to the laws pertaining to public records throughout the revised
16 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
17 limitations are hereby continued in effect by incorporation into this Chapter by
18 citation:

19 * * *

20 (10) R.S. 22:2, 14, 42.1, 88, 244, 461, 572, 574, 628, 706, 732, 752, 1203,
21 1460, 1466, 1546, 1644, 1656, 1723, 1929, 1983, **1984**, 2036, 2303

22 * * *

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl Horne.

DIGEST

Hebert (SB 676)

Present law requires the commissioner of insurance to conduct an annual review of all insurers in the state other than life, health, and accident insurers and non-profit funeral associations.

Proposed law removes the current restrictions and requires that the commissioner conduct financial and market analysis of all insurers licensed to do business in the state and conduct

regulatory reviews of any entities regulated by the Department of Insurance or regulated under Title 22. Proposed law requires that such reviews include the market conduct annual statement of the insurer or regulated entity.

Proposed law removes the present law requirement that the commissioner timely furnish to each insurer a report detailing the finding of the annual review and for the insurer to send a response to the commission within 45 days.

Proposed law provides that in the case of a foreign insurer licensed in the state, the commissioner may rely upon the financial or market analysis conducted under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program.

Proposed law provides that failure of an insurer or regulated entity to provide requested information to the department during such financial or market analysis may subject the insurer or regulated entity to revocation or suspension of license or a fine. Requires that every insurer or regulated entity produce and make freely accessible to the commissioner the accounts, records, documents and files in its possession or control.

Proposed law provides that all working papers, recorded information, documents and copies of those documents utilized in the course of a regulatory review, financial, or market analysis shall be given confidential status and shall not be subject to a subpoena or to discovery, except in specific circumstances.

Proposed law provides that any documents, materials, or other information which are disclosed by the commissioner to a third party shall not be admissible in evidence in a private civil action and shall be exempt from any applicable freedom of information law, public records law, or similar statute. Provides that no person or entity which receives or has access to documents or other information shall be permitted or required to testify in a private civil action concerning such documents or other information. Provides that no waiver of an applicable privilege or a claim of confidentiality in the documents or other information shall occur as a result of disclosure to the commissioner. Nothing in proposed law shall require an insurer to disclose documents or other information to a third party that is not otherwise required by law to be disclosed.

Proposed law provides that in the conduct of these financial and market reviews guidelines and procedures set forth in the *Financial Analysis Handbook* or the *Market Regulation Handbook* shall be employed, subject to the commissioner's discretion.

Proposed law provides that nothing in proposed law shall be construed to limit the commissioner's authority to use these findings in any legal or regulatory action which the commissioner deems appropriate.

Proposed law provides for thirty days notice to an insurer or regulated entity should any fine be levied.

Present law provides exceptions to documents that are subject to the public records law. Proposed law adds to the list of exceptions the financial and market analysis provided under proposed law.

Effective August 15, 2010.

(Amends R.S. 22:1984 and R.S. 44:4.1(B)(10))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Creates an exception for trusts established and operated under Title 22.
2. Makes technical changes.
3. Provides that every insurer or regulated entity shall produce and make freely accessible to the commissioner the accounts, records, documents and files in its possession or control.
4. Provides for admissibility as evidence in a civil action of any documents, materials, or other information which are disclosed by the commissioner to a third party and for exemption from any applicable freedom of information law, public records law, or similar statute.
5. Provides for thirty days notice to an insurer or regulated entity should any fine be levied.