

2018 Regular Session

HOUSE BILL NO. 607

BY REPRESENTATIVE SEABAUGH

AN ACT

To amend and reenact R.S. 22:1983(E)(introductory paragraph) and (2), (G), and (H), 1984(G), and 2191(A)(2) and to enact R.S. 22:1983(E)(3), relative to examinations and investigations by the commissioner of insurance; to authorize an investigatory hearing for the purposes of obtaining additional information; to provide for appellate review of examination reports; to provide for appellate review of certain fines; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1983(E)(introductory paragraph) and (2), (G), and (H), 1984(G), and 2191(A)(2) are hereby amended and reenacted and R.S. 22:1983(E)(3) is hereby enacted to read as follows:

§1983. Examination reports

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E. Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, as provided for in Subsections B and D of this Section, the commissioner shall fully consider and review the refiled report, together with any written submissions or rebuttals and any relevant portions of the workpapers of the examiner and enter an order ~~either~~ doing one of the following:

* * *

(2) ~~Rejecting the examination report and ordering a hearing pursuant to the provisions of Chapter 12 of this Title, for purposes of obtaining additional documentation, data, information, and testimony.~~

(3) Ordering, either on the commissioner's own authority or upon the written request of the company, an investigatory hearing for the purposes of obtaining additional documentation, data, information, and testimony. The hearing shall be held in accordance with all of the following:

(a) The hearing shall be conducted by the commissioner or the commissioner's authorized representative and shall be conducted as a nonadversarial confidential investigatory proceeding for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company.

(b) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing.

(c)(i) The hearing shall proceed expeditiously with discovery by both parties. Discovery by the company shall be limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal.

(ii) The commissioner or the commissioner's authorized representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's authorized representative shall be under oath and preserved for the record.

(iii) Nothing contained in this Paragraph shall require the department, pursuant to the hearing or as part of discovery, to disclose information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(d) The hearing shall proceed with the commissioner or the commissioner's authorized representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation.

The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(e) Within twenty days of the conclusion of the hearing, the commissioner shall enter an order pursuant to Paragraph (C)(1) or (E)(1) of this Section.

* * *

G.(1) Within thirty days of receipt of notification of the order of the commissioner to the company made pursuant to Subsection F of this Section, the company may make written demand for ~~a hearing pursuant to the provisions of Chapter 12 of this Title.~~ an appeal to the Nineteenth Judicial District Court.

(2) The court shall conduct a review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(3) The filing of an appeal pursuant to this Section shall stay the application of any rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

H. The ~~hearing~~ appeal proceedings provided for ~~under Paragraph (E)(2) or in Subsection G of this Section shall be a confidential proceeding.~~ confidential, and all filings in the proceeding shall be sealed. At the conclusion of the ~~hearing,~~ appeal proceedings, the commissioner shall enter an order, not inconsistent with any orders issued pursuant to Subsection G of this Section, adopting the examination report as filed or refiled, or with modification or corrections, and may order the company to take any action the commissioner considers necessary and appropriate to cure any violation of any law, regulation, or prior order of the commissioner.

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§1984. Commissioner of insurance to conduct financial and market analysis of insurers and regulated entities

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G.(1) Any insurer or regulated entity against whom a fine has been levied shall be given thirty days notice of ~~such~~ the action. Upon receipt of this notice, the aggrieved insurer or regulated entity may apply for and shall be entitled to ~~a hearing~~ pursuant to ~~R.S. 22:2191 et seq.~~ an appeal to the Nineteenth Judicial District Court.

(2) The court shall conduct a review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

(3) The filing of an appeal pursuant to this Section shall stay the application of any rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors, or the public.

(4) The appeal proceedings provided for pursuant to this Subsection shall be confidential, and all filings in the proceeding shall be sealed.

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§2191. Hearings

A. The division of administrative law shall hold a hearing in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall hold a hearing under either of the following circumstances:

* * *

(2) Upon written demand for a hearing made by any person aggrieved by any act, order of the commissioner, or failure of the commissioner of insurance to act, except where provisions of this Code require the demand be made to other agencies or courts, if such failure is deemed an act under any provision of this Code, or by any report, promulgation, or order of the commissioner of insurance other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

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Section 2. This Act shall become effective on January 1, 2019.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____