HLS 18RS-735 ENGROSSED

2018 Regular Session

HOUSE BILL NO. 607

1

2

BY REPRESENTATIVE SEABAUGH

INSURANCE: Provides relative to the commissioner of insurance's examination and investigation authority

AN ACT

To amend and reenact R.S. 22:1983(E)(introductory paragraph) and (2), (G), and (H),

3 1984(G), and 2191(A)(2) and to enact R.S. 22:1983(E)(3), relative to examinations 4 and investigations by the commissioner of insurance; to authorize an investigatory hearing for the purposes of obtaining additional information; to provide for appellate 5 6 review of examination reports; to provide for appellate review of certain fines; to 7 provide for an effective date; and to provide for related matters. 8 Be it enacted by the Legislature of Louisiana: 9 Section 1. R.S. 22:1983(E)(introductory paragraph) and (2), (G), and (H), 1984(G), 10 and 2191(A)(2) are hereby amended and reenacted and R.S. 22:1983(E)(3) is hereby enacted 11 to read as follows: 12 §1983. Examination reports 13 14 E. Within thirty days of the end of the period allowed for the receipt of 15 written submissions or rebuttals, as provided for in Subsections B and D of this 16 Section, the commissioner shall fully consider and review the refiled report, together 17 with any written submissions or rebuttals and any relevant portions of the 18 workpapers of the examiner and enter an order either doing one of the following: 19

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	(2) Rejecting the examination report and ordering a hearing pursuant to the
2	provisions of Chapter 12 of this Title, for purposes of obtaining additional
3	documentation, data, information, and testimony.
4	(3) Ordering, either on the commissioner's own authority or upon the written
5	request of the company, an investigatory hearing for the purposes of obtaining
6	additional documentation, data, information, and testimony. The hearing shall be
7	held in accordance with all of the following:
8	(a) The hearing shall be conducted by the commissioner or the
9	commissioner's authorized representative and shall be conducted as a nonadversarial
10	confidential investigatory proceeding for the resolution of any inconsistencies,
11	discrepancies, or disputed issues apparent upon the face of the filed examination
12	report or raised by or as a result of the commissioner's review of relevant workpapers
13	or by the written submission or rebuttal of the company.
14	(b) The commissioner shall not appoint an examiner as an authorized
15	representative to conduct the hearing.
16	(c)(i) The hearing shall proceed expeditiously with discovery by both parties.
17	Discovery by the company shall be limited to the examiner's workpapers that tend
18	to substantiate any assertions set forth in any written submission or rebuttal.
19	(ii) The commissioner or the commissioner's authorized representative may
20	issue subpoenas for the attendance of any witnesses or the production of any
21	documents deemed relevant to the investigation whether under the control of the
22	department, the company, or other persons. The documents produced shall be
23	included in the record and testimony taken by the commissioner or the
24	commissioner's authorized representative shall be under oath and preserved for the
25	record.
26	(iii) Nothing contained in this Paragraph shall require the department,
27	pursuant to the hearing or as part of discovery, to disclose information or records that
28	would indicate or show the existence or content of any investigation or activity of a
29	criminal justice agency.

1	(d) The hearing shall proceed with the commissioner or the commissioner's
2	authorized representative posing questions to the persons subpoenaed. Thereafter,
3	the company and the department may present testimony relevant to the investigation.
4	The company and the department shall be permitted to make closing statements and
5	may be represented by counsel of their choice.
6	(e) Within twenty days of the conclusion of the hearing, the commissioner
7	shall enter an order pursuant to Paragraph (C)(1) or (E)(1) of this Section.
8	* * *
9	G.(1) Within thirty days of receipt of notification of the order of the
10	commissioner to the company made pursuant to Subsection F of this Section, the
11	company may make written demand for a hearing pursuant to the provisions of
12	Chapter 12 of this Title. an appeal to the Nineteenth Judicial District Court.
13	(2) The court shall conduct a review without a jury and by trial de novo,
14	except that if all parties, including the commissioner, so stipulate, the review shall
15	be confined to the record. Portions of the record may be introduced by stipulation
16	into evidence in a trial de novo as to those parties so stipulating.
17	(3) The filing of an appeal pursuant to this Section shall stay the application
18	of any rule, regulation, order, or other action of the commissioner to the appealing
19	party unless the court, after giving the party notice and an opportunity to be heard,
20	determines that a stay would be detrimental to the interest of policyholders,
21	shareholders, creditors, or the public.
22	H. The hearing appeal proceedings provided for under Paragraph (E)(2) or
23	in Subsection G of this Section shall be a confidential proceeding. confidential, and
24	all filings in the proceeding shall be sealed. At the conclusion of the hearing, appeal
25	proceedings, the commissioner shall enter an order, not inconsistent with any orders
26	issued pursuant to Subsection G of this Section, adopting the examination report as
27	filed or refiled, or with modification or corrections, and may order the company to

1	take any action the commissioner considers necessary and appropriate to cure any
2	violation of any law, regulation, or prior order of the commissioner.
3	* * *
4	§1984. Commissioner of insurance to conduct financial and market analysis of
5	insurers and regulated entities
6	* * *
7	G.(1) Any insurer or regulated entity against whom a fine has been levied
8	shall be given thirty days notice of such the action. Upon receipt of this notice, the
9	aggrieved insurer or regulated entity may apply for and shall be entitled to a hearing
10	pursuant to R.S. 22:2191 et seq. an appeal to the Nineteenth Judicial District Court.
11	(2) The court shall conduct a review without a jury and by trial de novo,
12	except that if all parties, including the commissioner, so stipulate, the review shall
13	be confined to the record. Portions of the record may be introduced by stipulation
14	into evidence in a trial de novo as to those parties so stipulating.
15	(3) The filing of an appeal pursuant to this Section shall stay the application
16	of any rule, regulation, order, or other action of the commissioner to the appealing
17	party unless the court, after giving the party notice and an opportunity to be heard,
18	determines that a stay would be detrimental to the interest of policyholders,
19	shareholders, creditors, or the public.
20	(4) The appeal proceedings provided for pursuant to this Subsection shall be
21	confidential, and all filings in the proceeding shall be sealed.
22	* * *
23	§2191. Hearings
24	A. The division of administrative law shall hold a hearing in accordance with
25	the Administrative Procedure Act, R.S. 49:950 et seq., and shall hold a hearing under
26	either of the following circumstances:
27	* * *
28	(2) Upon written demand for a hearing made by any person aggrieved by any
29	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.
* * *
Section 2. This Act shall become effective on January 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 607 Engrossed

2018 Regular Session

Seabaugh

Abstract: Provides for appellate review of certain administrative actions by the commissioner of insurance in the 19th Judicial District Court.

<u>Present law</u> requires the commissioner of insurance to make an examination, at least once every five years, of all insurers doing business in this state and at any other time when the commissioner deems it necessary. <u>Present law</u> further authorizes the commissioner to make an examination of any producer doing business in this state whenever he has received at least three complaints within a 30-day period.

Proposed law retains proposed law.

<u>Present law</u> requires the commissioner of insurance, within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals in response to a filed examination report, to 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 to do either:

- (1) Adopting the examination report as refiled or with modification or corrections.
- (2) Rejecting the examination report and ordering a hearing for purposes of obtaining additional documentation, data, information, and testimony.

<u>Proposed law</u> repeals the authorization to order an administrative hearing if the examination report is rejected buts adds an option for the commissioner to order an investigatory hearing for the purposes of obtaining additional information and provides for the hearing procedure.

<u>Present law</u> authorizes a company, within 30 days of receipt of notification of the decision of the commissioner adopting the examination report, to make written demand for an administrative hearing. <u>Present law</u> further grants any insurer or regulated entity against whom a fine has been levied the right to an administrative hearing.

<u>Proposed law</u> changes the hearing to an appeal to the 19th JDC and requires the court to 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.

Page 5 of 6

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

<u>Proposed law</u> provides that the filing of an appeal 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.

Present law provides that the administrative hearing shall be a confidential proceeding.

<u>Proposed law</u> provides that the appeal proceeding shall be confidential and all filings in the proceeding shall be sealed.

Effective Jan. 1, 2019.

(Amends R.S. 22:1983(E)(introductory paragraph) and (2), (G), and (H), 1984(G), and 2191(A)(2); Adds R.S. 22:1983(E)(3))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Insurance</u> to the original bill:

- 1. Authorize the commissioner to order an investigatory hearing for the purposes of obtaining additional information.
- 2. Provide for the hearing procedure.
- 3. Make technical changes.