

HOUSE BILL No. 2515

By Committee on Insurance

1-27

1 AN ACT concerning insurance; pertaining to confidentiality of certain
2 documents; amending K.S.A. 2013 Supp. 40-222 and repealing the
3 existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 40-222 is hereby amended to read as
7 follows: 40-222. (a) Whenever the commissioner of insurance deems it
8 necessary but at least once every five years, the commissioner may make,
9 or direct to be made, a financial examination of any insurance company in
10 the process of organization, or applying for admission or doing business in
11 this state. In addition, at the commissioner's discretion the commissioner
12 may make, or direct to be made, a market regulation examination of any
13 insurance company doing business in this state.

14 (b) In scheduling and determining the nature, scope and frequency of
15 examinations of financial condition, the commissioner shall consider such
16 matters as the results of financial statement analyses and ratios, changes in
17 management or ownership, actuarial opinions, reports of independent
18 certified public accountants and other criteria as set forth in the examiner's
19 handbook adopted by the national association of insurance commissioners
20 and in effect when the commissioner exercises discretion under this
21 subsection.

22 (c) For the purpose of such examination, the commissioner of
23 insurance or the persons appointed by the commissioner, for the purpose of
24 making such examination shall have free access to the books and papers of
25 any such company that relate to its business and to the books and papers
26 kept by any of its agents and may examine under oath, which the
27 commissioner or the persons appointed by the commissioner are
28 empowered to administer, the directors, officers, agents or employees of
29 any such company in relation to its affairs, transactions and condition.

30 (d) The commissioner may also examine or investigate any person, or
31 the business of any person, in so far as such examination or investigation
32 is, in the sole discretion of the commissioner, necessary or material to the
33 examination of the company, but such examination or investigation shall
34 not infringe upon or extend to any communications or information
35 accorded privileged or confidential status under any other laws of this
36 state.

1 (e) In lieu of examining the financial condition of a foreign or alien
2 insurance company, the commissioner of insurance may accept the report
3 of the examination made by or upon the authority of the company's state of
4 domicile or port-of-entry state until January 1, 1994. Thereafter, such
5 reports as they relate to financial condition may only be accepted if:

6 (1) The insurance department conducting the examination was at the
7 time of the examination accredited under the national association of
8 insurance commissioners' financial regulation standards and accreditation
9 program; or

10 (2) the examination is performed under the supervision of an
11 accredited insurance department, or with the participation of one or more
12 examiners who are employed by such an accredited insurance department
13 and who after a review of the examination work papers and report state
14 under oath that the examination was performed in a manner consistent
15 with the standards and procedures required by their insurance department.

16 (f) Upon determining that an examination should be conducted, the
17 commissioner or the commissioner's designee shall appoint one or more
18 examiners to perform the examination and instruct them as to the scope of
19 the examination. In conducting an examination of financial condition, the
20 examiner shall observe those guidelines and procedures set forth in the
21 examiners' handbook adopted by the national association of insurance
22 commissioners. The commissioner may also employ such other guidelines
23 or procedures as the commissioner may deem appropriate.

24 (g) The refusal of any company, by its officers, directors, employees
25 or agents, to submit to examination or to comply with any reasonable
26 written request of the examiners shall be grounds for suspension or refusal
27 of, or nonrenewal of any license or authority held by the company to
28 engage in an insurance or other business subject to the commissioner's
29 jurisdiction. Any such proceedings for suspension, revocation or refusal of
30 any license or authority shall be conducted in accordance with the
31 provisions of the Kansas administrative procedure act.

32 (h) When making an examination under this act, the commissioner
33 may retain attorneys, appraisers, independent actuaries, independent
34 certified public accountants or other professionals and specialists as
35 examiners, the reasonable cost of which shall be borne by the company
36 which is the subject of the examination.

37 (i) Nothing contained in this act shall be construed to limit the
38 commissioner's authority to terminate or suspend any examination in order
39 to pursue other legal or regulatory action pursuant to the insurance laws of
40 this state.

41 (j) Nothing contained in this act shall be construed to limit the
42 commissioner's authority to use and, if appropriate, to make public any
43 final or preliminary examination report in the furtherance of any legal or

1 regulatory action which the commissioner may, in the commissioner's sole
2 discretion, deem appropriate.

3 (k) (1) No later than 30 days following completion of the examination
4 or at such earlier time as the commissioner shall prescribe, the examiner in
5 charge shall file with the department a verified written report of
6 examination under oath. No later than 30 days following receipt of the
7 verified report, the department shall transmit the report to the company
8 examined, together with a notice which shall afford such company
9 examined a reasonable opportunity of not more than 30 days to make a
10 written submission or rebuttal with respect to any matters contained in the
11 examination report.

12 (2) Within 30 days of the end of the period allowed for the receipt of
13 written submissions or rebuttals, the commissioner shall fully consider and
14 review the report, together with any written submissions or rebuttals and
15 any relevant portions of the examiners workpapers and enter an order:

16 (A) Adopting the examination report as filed or with modification or
17 corrections. If the examination report reveals that the company is operating
18 in violation of any law, regulation or prior order of the commissioner, the
19 commissioner may order the company to take any action the commissioner
20 considers necessary and appropriate to cure such violations; or

21 (B) rejecting the examination report with directions to the examiners
22 to reopen the examination for purposes of obtaining additional data,
23 documentation or information, and refiling pursuant to subsection (k); or

24 (C) call and conduct a fact-finding hearing in accordance with K.S.A.
25 40-281, and amendments thereto, for purposes of obtaining additional
26 documentation, data, information and testimony.

27 (3) All orders entered as a result of revelations contained in the
28 examination report shall be accompanied by findings and conclusions
29 resulting from the commissioner's consideration and review of the
30 examination report, relevant examiner workpapers and any written
31 submissions or rebuttals. Within 30 days of the issuance of the adopted
32 report, the company shall file affidavits executed by each of its directors
33 stating under oath that they have received a copy of the adopted report and
34 related orders.

35 (4) Upon the adoption of the examination report, the commissioner
36 shall hold the content of the examination report as private and confidential
37 information for a period of 30 days except to the extent provided in
38 paragraph (5). Thereafter, the commissioner may open the report for public
39 inspection so long as no court of competent jurisdiction has stayed its
40 publication.

41 (5) (A) Except as provided in paragraph (B), nothing contained in this
42 act shall prevent or be construed as prohibiting the commissioner from
43 disclosing the content of an examination report, preliminary examination

1 report or results, or any matter relating thereto, at any time to:

- 2 (i) The insurance department of this or any other state or country;
3 (ii) law enforcement officials of this or any other state or agency of
4 the federal government or any other country; or
5 (iii) officials of any agency of another country.

6 (B) The commissioner shall not share any information listed in
7 paragraph (A) unless the agency or office receiving the report or matters
8 relating thereto agrees in writing to hold it confidential and in a manner
9 consistent with this act.

10 (6) In the event the commissioner determines that regulatory action is
11 appropriate as a result of any examination, the commissioner may initiate
12 any proceedings or actions as provided by law.

13 (7) All working papers, recorded information, documents and copies
14 thereof produced by, obtained by or disclosed to the commissioner or any
15 other person in the course of an examination made under this act *including*
16 *analysis by the commissioner pertaining to either the financial condition*
17 *or the market regulation of a company* must be given confidential
18 treatment and are not subject to subpoena and may not be made public by
19 the commissioner or any other person, except to the extent otherwise
20 specifically provided in K.S.A. 45-215 et seq., and amendments thereto.
21 Access may also be granted to the national association of insurance
22 commissioners *and its affiliates*. Such parties must agree in writing prior
23 to receiving the information to provide to it the same confidential
24 treatment as required by this section, unless the prior written consent of the
25 company to which it pertains has been obtained.

26 (8) Whenever it appears to the commissioner of insurance from such
27 examination or other satisfactory evidence that the solvency of any such
28 insurance company is impaired, or that it is doing business in violation of
29 any of the laws of this state, or that its affairs are in an unsound condition
30 so as to endanger its policyholders, the commissioner of insurance shall
31 give the company a notice and an opportunity for a hearing in accordance
32 with the provisions of the Kansas administrative procedure act. If the
33 hearing confirms the report of the examination, the commissioner shall
34 suspend the certificate of authority of such company until its solvency
35 shall have been fully restored and the laws of the state fully complied with.
36 The commissioner may, if there is an unreasonable delay in restoring the
37 solvency of such company and in complying with the law, revoke the
38 certificate of authority of such company to do business in this state. Upon
39 revoking any such certificate the commissioner shall commence an action
40 to dissolve such company or to enjoin the same from doing or transacting
41 business in this state.

42 Sec. 2. K.S.A. 2013 Supp. 40-222 is hereby repealed.

43 Sec. 3. This act shall take effect and be in force from and after its

- 1 publication in the statute book.