

2023 Kansas Statutes

40-4350. Special purpose insurance captives; confidentiality. (a) Documents, materials or other information obtained by or disclosed to the commissioner pursuant to K.S.A. 40-4332 through 40-4352, and amendments thereto, shall:

- (1) Be confidential and privileged, except as provided in K.S.A. 40-4347, and amendments thereto; and
- (2) not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(b) The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates that would be affected thereby notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, determines that the interests of policyholders, shareholders or the public would be served by the publication thereof, in which event, the commissioner may publish all or any part thereof in such a manner as the commissioner may deem appropriate. In making such determination, the commissioner of insurance also shall take into consideration any potential adverse consequences of the disclosure thereof.

(c) Neither the commissioner of insurance nor any person who received documents, materials or other information while acting under the authority of the commissioner of insurance or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a).

(d) In order to assist in the performance of the commissioner's duties, the commissioner of insurance may:

(1) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with federal and international regulatory agencies and the NAIC and its affiliates, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information and has verified in writing the legal authority to maintain confidentiality;

(2) receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the national association of insurance commissioners, and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information. Documents received pursuant to this section shall not be subject to disclosure pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto; and

(3) Sharing agreements provided for in subsection (d) shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal or international regulators;

(B) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this act remains with the commissioner, and the NAIC's use of the information is subject to the direction of the commissioner;

(C) require prompt notice to be given to an insurer and its affiliates whose confidential information in the possession of the NAIC pursuant to this act that such information is subject to a request or subpoena to the NAIC for disclosure or production; and

(D) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer and its affiliates shared with the NAIC and its affiliates and subsidiaries

pursuant to this act. Documents, materials or other information in the possession or control of the national association of insurance commissioners shall be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

(e) The sharing of information by the commissioner of insurance pursuant to this act shall not constitute a delegation of regulatory authority or rulemaking authority, and the commissioner of insurance is solely responsible for the administration, execution and enforcement of the provisions of this act.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner of insurance under this act or as a result of sharing as authorized in subsection (d).

History: L. 2018, ch. 50, § 33; L. 2023, ch. 25, § 3; July 1.