

**As Amended by House Committee**

---

---

*Session of 2008*

**HOUSE BILL No. 2675**

By Committee on Insurance and Financial Institutions

1-24

---

10 AN ACT concerning licensing of insurance agents; pertaining to certain  
11 state's license revocation for nonpayment of income tax; amending  
12 K.S.A. 2007 Supp. 40-4906 ~~and~~, 40-4909 **and 79-3234** and repealing  
13 the existing sections.

14

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

16 New Section 1. (a) The commissioner of insurance shall furnish to  
17 the secretary of revenue a list of all insurance agents licensed pursuant  
18 to the provisions of K.S.A. 2007 Supp. 40-4906, and amendments thereto,  
19 for the states identified in subsection (b). The list shall contain for each  
20 licensee the licensee's:

21 (1) Name and address;

22 (2) social security number or taxpayer identification number or fed-  
23 eral employer identification number, whichever is applicable; and

24 (3) date of license renewal.

25 (b) The commissioner of insurance shall certify to the secretary of  
26 revenue a list of those states which withhold nonresident license renewal  
27 for Kansas insurance agents pending proof of filing income tax returns by  
28 such Kansas insurance agents in the nonresident state.

29 (c) Such list shall be provided electronically in the format required  
30 by the secretary of revenue. The commissioner and the secretary of rev-  
31 enue shall review the listed licensees for income tax delinquency and shall  
32 mail a notice of income tax delinquency to any licensee who is delinquent  
33 in the payment of income taxes or the filing of income tax returns and to  
34 the commissioner. The secretary of revenue shall notify the commissioner  
35 promptly whenever any listed licensee has satisfied the income tax  
36 delinquency.

37 (d) Notwithstanding any provision of law prohibiting disclosure by  
38 the secretary of revenue of the contents of taxpayer records or informa-  
39 tion and notwithstanding any confidentiality statute administered by the  
40 commissioner, all information exchanged among or disclosed by the sec-  
41 retary of revenue to the commissioner of insurance pursuant to this sub-  
42 section is lawful.

43 (e) The information obtained by the commissioner from the secretary

1 of revenue as authorized by subsection (c) shall be used only for the  
2 purpose authorized by this section. Any person employed by, or formerly  
3 employed, by the commissioner and who receives such information shall  
4 be subject to the provisions of K.S.A. 79-3234, and amendments thereto,  
5 or K.S.A. 79-3614, and amendments thereto, as applicable, with respect  
6 to any confidential taxpayer information, and shall be subject to the same  
7 duty of confidentiality with respect to such confidential information im-  
8 posed by law on officers and employees of the department of revenue  
9 and shall be subject to any civil or criminal penalties imposed by law for  
10 violations of such duty of confidentiality.

11 (f) This section shall be supplemental to and a part of the uniform  
12 insurance agents licensing act.

13 Sec. 2. K.S.A. 2007 Supp. 40-4906 is hereby amended to read as  
14 follows: 40-4906. (a) Unless denied, *suspended, revoked or refused re-*  
15 *newal* licensure pursuant to K.S.A. 2007 Supp. 40-4909, and amendments  
16 thereto, a nonresident person shall receive a nonresident agent license if:

17 (1) Such person is currently licensed as a resident and in good stand-  
18 ing in such person's home state;

19 (2) such person has submitted the proper request for licensure and  
20 has paid to the commissioner a nonrefundable application fee of \$30 and  
21 a biennial fee of \$50;

22 (3) such person has submitted or transmitted to the commissioner of  
23 insurance a copy of the application for licensure that such person sub-  
24 mitted to such person's home state, or in lieu of the same, a completed  
25 application on a form prescribed by the commissioner; and

26 (4) such person's home state awards a nonresident agent license to  
27 residents of this state on the same basis.

28 (b) The commissioner may verify the insurance agent's licensing  
29 status through the producer database maintained by the NAIC, its affil-  
30 iates or subsidiaries.

31 (c) (1) Any nonresident agent who is licensed in this state and who  
32 moves from one state to another state or a resident agent who moves  
33 from this state to another state shall file with the commissioner within 30  
34 days a change of address and provide certification from the new resident  
35 state.

36 (2) Any insurance agent who resides in this state and who moves from  
37 this state to another state shall file with the commissioner within 30 days  
38 a change of address and provide certification from the new resident state.

39 (3) No fee or license application shall be required for any filing re-  
40 quired by this subsection.

41 (d) Subject to the provisions of subsection (a), any person licensed as  
42 a surplus lines agent in such person's home state shall receive a nonres-  
43 ident surplus lines agent license. Except as provided in subsection (a),

- 1 nothing in this section shall be construed to amend or supersede any  
2 provision of K.S.A. 40-246b and amendments thereto.
- 3 (e) Subject to the provisions of subsection (a), any person licensed as  
4 a limited line credit insurance or other type of limited lines agent in such  
5 person's home state shall receive a nonresident limited lines agent license  
6 in this state granting the same scope of authority as granted under the  
7 license issued by the such insurance agent's home state.
- 8 Sec. 3. K.S.A. 2007 Supp. 40-4909 is hereby amended to read as  
9 follows: 40-4909. (a) The commissioner may deny, suspend, revoke or  
10 refuse renewal of any license issued under this act if the commissioner  
11 finds that the applicant or license holder has:
- 12 (1) Provided incorrect, misleading, incomplete or untrue information  
13 in the license application.
- 14 (2) Violated:
- 15 (A) Any provision of chapter 40 of the Kansas Statutes Annotated,  
16 and amendments thereto, or any rule and regulation promulgated  
17 thereunder;
- 18 (B) any subpoena or order of the commissioner;
- 19 (C) any insurance law or regulation of another state; or
- 20 (D) any subpoena or order issued by the regulatory official for insur-  
21 ance in another state.
- 22 (3) Obtained or attempted to obtain a license under this act through  
23 misrepresentation or fraud.
- 24 (4) Improperly withheld, misappropriated or converted any moneys  
25 or properties received in the course of doing insurance business.
- 26 (5) Intentionally misrepresented the provisions, terms and conditions  
27 of an actual or proposed insurance contract or application for insurance.
- 28 (6) Been convicted of a misdemeanor or felony.
- 29 (7) Admitted to or been found to have committed any insurance un-  
30 fair trade practice or fraud in violation of K.S.A. 40-2404 and amendments  
31 thereto.
- 32 (8) Used any fraudulent, coercive, or dishonest practice, or demon-  
33 strated any incompetence, untrustworthiness or financial irresponsibility  
34 in the conduct of business in this state or elsewhere.
- 35 (9) Had an insurance agent license, or its equivalent, denied, sus-  
36 pended or revoked in any other state, district or territory.
- 37 (10) Forged another person's name to an application for insurance or  
38 to any document related to an insurance transaction.
- 39 (11) Improperly used notes or any other reference material to com-  
40 plete an examination for an insurance license issued under this act.
- 41 (12) Knowingly accepted insurance business from an individual who  
42 is not licensed.
- 43 (13) Failed to comply with any administrative or court order imposing

1 a child support obligation upon the applicant or license holder.

2 (14) Failed to pay any state income tax or comply with any adminis-  
3 trative or court order directing payment of state income tax.

4 (15) Rebated the whole or any part of any insurance premium or  
5 offered in connection with the presentation of any contract of insurance  
6 any other inducement not contained in the contract of insurance.

7 (16) Made any misleading representation or incomplete comparison  
8 of policies to any person for the purposes of inducing or tending to induce  
9 such person to lapse, forfeit or surrender such person's insurance then in  
10 force.

11 (b) In addition, the commissioner may suspend, revoke or refuse re-  
12 newal of any license issued under this act if the commissioner finds that  
13 the interests of the insurer or the insurable interests of the public are not  
14 properly served under such license.

15 (c) *Except as provided in subsection (e)*, any action taken under this  
16 section which affects any license or imposes any administrative penalty  
17 shall be taken only after notice and an opportunity for a hearing con-  
18 ducted in accordance with the provisions of the Kansas administrative  
19 procedures act.

20 (d) The license of any business entity may be suspended, revoked or  
21 refused renewal if the insurance commissioner finds that any violation  
22 committed by an individual licensee employed by or acting on behalf of  
23 such business entity was known by or should have been known by one or  
24 more of the partners, officers or managers acting on behalf of the business  
25 entity and:

26 (1) Such violation was not reported to the insurance commissioner  
27 by such business entity; or

28 (2) such business entity failed to take any corrective action.

29 (e) *Whenever the commissioner receives a notice of income tax delin-*  
30 *quency from the secretary of revenue pursuant to section 1, and amend-*  
31 *ments thereto, pertaining to a nonresident agent licensee the commissioner*  
32 *shall deny, suspend, revoke or refuse renewal of any license of such non-*  
33 *resident agent licensee.*

34 ~~(e)~~ (f) None of the following actions shall deprive the commissioner  
35 of any jurisdiction or right to institute or proceed with any disciplinary  
36 proceeding against such license, to render a decision suspending, revok-  
37 ing or refusing to renew such license, or to establish and make a record  
38 of the facts of any violation of law for any lawful purpose:

39 (1) The imposition of an administrative penalty under this section;

40 (2) the lapse or suspension of any license issued under this act by  
41 operation of law;

42 (3) the licensee's failure to renew any license issued under this act;

43 or

1 (4) the licensee's voluntary surrender of any license issued under this  
 2 act. No such disciplinary proceeding shall be instituted against any li-  
 3 censee after the expiration of two years from the termination of the  
 4 license.

5 ~~(f)~~ (g) Whenever the commissioner imposes any administrative pen-  
 6 alty or denies, suspends, revokes or refuses renewal of any license pur-  
 7 suant to subsection (a), any costs incurred as a result of conducting an  
 8 administrative hearing authorized under the provisions of this section  
 9 shall be assessed against the person who is the subject of the hearing or  
 10 any business entity represented by such person who is the party to the  
 11 matters giving rise to the hearing. As used in this subsection, "costs" shall  
 12 include witness fees, mileage allowances, any costs associated with the  
 13 reproduction of documents which become a part of the hearing record  
 14 and the expense of making a record of the hearing.

15 ~~(g)~~ (h) No person whose license as an agent or broker had been sus-  
 16 pended or revoked shall be employed by any insurance company doing  
 17 business in this state either directly, indirectly, as an independent con-  
 18 tractor or otherwise to negotiate or effect contracts of insurance, sure-  
 19 tyship or indemnity or perform any act toward the solicitation of or trans-  
 20 action of any business of insurance during the period of such suspension  
 21 or revocation.

22 ~~(h)~~ (i) In lieu of taking any action under subsection (a), the commis-  
 23 sioner may:

- 24 (1) Censure the person; or
- 25 (2) issue an order imposing an administrative penalty up to a maxi-  
 26 mum of \$500 for each violation but not to exceed \$2,500 for the same  
 27 violation occurring within any six consecutive calendar months from the  
 28 date of the original violation unless such person knew or should have  
 29 known that the violative act could give rise to disciplinary action under  
 30 subsection (a). If such person knew or reasonably should have known the  
 31 violative act could give rise to any disciplinary proceeding authorized by  
 32 subsection (a), the commissioner may impose a penalty up to a maximum  
 33 of \$1,000 for each violation but not to exceed \$5,000 for the same violation  
 34 occurring within any six consecutive calendar months from the date of  
 35 the imposition of the original administrative penalty.

36 **Sec. 4. K.S.A. 2007 Supp. 79-3234 is hereby amended to read**  
 37 **as follows: 79-3234. (a) All reports and returns required by this act**  
 38 **shall be preserved for three years and thereafter until the director**  
 39 **orders them to be destroyed.**

40 **(b) Except in accordance with proper judicial order, or as pro-**  
 41 **vided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A.**  
 42 **46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments**  
 43 **thereto, it shall be unlawful for the secretary, the director, any**

1 deputy, agent, clerk or other officer, employee or former em-  
2 ployee of the department of revenue or any other state officer or  
3 employee or former state officer or employee to divulge, or to  
4 make known in any way, the amount of income or any particulars  
5 set forth or disclosed in any report, return, federal return or fed-  
6 eral return information required under this act; and it shall be  
7 unlawful for the secretary, the director, any deputy, agent, clerk  
8 or other officer or employee engaged in the administration of this  
9 act to engage in the business or profession of tax accounting or to  
10 accept employment, with or without consideration, from any per-  
11 son, firm or corporation for the purpose, directly or indirectly, of  
12 preparing tax returns or reports required by the laws of the state  
13 of Kansas, by any other state or by the United States government,  
14 or to accept any employment for the purpose of advising, prepar-  
15 ing material or data, or the auditing of books or records to be used  
16 in an effort to defeat or cancel any tax or part thereof that has  
17 been assessed by the state of Kansas, any other state or by the  
18 United States government.

19 (c) The secretary or the secretary's designee may: (1) Publish  
20 statistics, so classified as to prevent the identification of particular  
21 reports or returns and the items thereof;

22 (2) allow the inspection of returns by the attorney general or  
23 other legal representatives of the state;

24 (3) provide the post auditor access to all income tax reports or  
25 returns in accordance with and subject to the provisions of sub-  
26 section (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments  
27 thereto;

28 (4) disclose taxpayer information from income tax returns to  
29 persons or entities contracting with the secretary of revenue where  
30 the secretary has determined disclosure of such information is es-  
31 sential for completion of the contract and has taken appropriate  
32 steps to preserve confidentiality;

33 (5) disclose to the secretary of commerce specific taxpayer in-  
34 formation related to financial information previously submitted by  
35 the taxpayer to the secretary of commerce concerning or relevant  
36 to any income tax credits, for purposes of verification of such in-  
37 formation or evaluating the effectiveness of any tax credit program  
38 administered by the secretary of commerce;

39 (6) disclose income tax returns to the state gaming agency to  
40 be used solely for the purpose of determining qualifications of li-  
41 censees of and applicants for licensure in tribal gaming. Any in-  
42 formation received by the state gaming agency shall be confiden-  
43 tial and shall not be disclosed except to the executive director,

1 employees of the state gaming agency and members and employ-  
2 ees of the tribal gaming commission;

3 (7) disclose the taxpayer's name, last known address and resi-  
4 dency status to the department of wildlife and parks to be used  
5 solely in its license fraud investigations;

6 (8) disclose the name, residence address, employer or Kansas  
7 adjusted gross income of a taxpayer who may have a duty of sup-  
8 port in a title IV-D case to the secretary of the Kansas department  
9 of social and rehabilitation services for use solely in administrative  
10 or judicial proceedings to establish, modify or enforce such sup-  
11 port obligation in a title IV-D case. In addition to any other limits  
12 on use, such use shall be allowed only where subject to a protective  
13 order which prohibits disclosure outside of the title IV-D proceed-  
14 ing. As used in this section, "title IV-D case" means a case being  
15 administered pursuant to part D of title IV of the federal social  
16 security act (42 U.S.C. §651 et seq.) and amendments thereto. Any  
17 person receiving any information under the provisions of this sub-  
18 section shall be subject to the confidentiality provisions of subsec-  
19 tion (b) and to the penalty provisions of subsection (e);

20 (9) permit the commissioner of internal revenue of the United  
21 States, or the proper official of any state imposing an income tax,  
22 or the authorized representative of either, to inspect the income  
23 tax returns made under this act and the secretary of revenue may  
24 make available or furnish to the taxing officials of any other state  
25 or the commissioner of internal revenue of the United States or  
26 other taxing officials of the federal government, or their author-  
27 ized representatives, information contained in income tax reports  
28 or returns or any audit thereof or the report of any investigation  
29 made with respect thereto, filed pursuant to the income tax laws,  
30 as the secretary may consider proper, but such information shall  
31 not be used for any other purpose than that of the administration  
32 of tax laws of such state, the state of Kansas or of the United States;

33 (10) communicate to the executive director of the Kansas lot-  
34 tery information as to whether a person, partnership or corpora-  
35 tion is current in the filing of all applicable tax returns and in the  
36 payment of all taxes, interest and penalties to the state of Kansas,  
37 excluding items under formal appeal, for the purpose of deter-  
38 mining whether such person, partnership or corporation is eligible  
39 to be selected as a lottery retailer;

40 (11) communicate to the executive director of the Kansas rac-  
41 ing commission as to whether a person, partnership or corporation  
42 has failed to meet any tax obligation to the state of Kansas for the  
43 purpose of determining whether such person, partnership or cor-

1 poration is eligible for a facility owner license or facility manager  
2 license pursuant to the Kansas parimutuel racing act;

3 (12) provide such information to the executive director of the  
4 Kansas public employees retirement system for the purpose of de-  
5 termining that certain individuals' reported compensation is in  
6 compliance with the Kansas public employees retirement act at  
7 K.S.A. 74-4901 et seq., and amendments thereto; ~~and~~

8 (13) provide taxpayer information of persons suspected of vi-  
9 olating K.S.A. 2007 Supp. 44-766, and amendments thereto, to the  
10 staff attorneys of the department of labor for the purpose of de-  
11 termining compliance by any person with the provisions of K.S.A.  
12 2007 Supp. 44-766, and amendments thereto, which information  
13 shall be limited to withholding tax and payroll information, the  
14 identity of any person that has been or is currently being audited  
15 or investigated in connection with the administration and enforce-  
16 ment of the withholding and declaration of estimated tax act,  
17 K.S.A. 79-3294 et seq., as amended, and the results or status of  
18 such audit or investigation; *and*

19 (14) provide taxpayer information to the commissioner of insurance  
20 for the purpose of providing notices as required by section 1, and amend-  
21 ments thereto.

22 (d) Any person receiving information under the provisions of  
23 subsection (c) shall be subject to the confidentiality provisions of  
24 subsection (b) and to the penalty provisions of subsection (e).

25 (e) Any violation of subsection (b) or (c) is a class A nonperson  
26 misdemeanor and, if the offender is an officer or employee of the  
27 state, such officer or employee shall be dismissed from office.

28 (f) Nothing in this section shall be construed to allow disclosure  
29 of the amount of income or any particulars set forth or disclosed  
30 in any report, return, federal return or federal return information,  
31 where such disclosure is prohibited by the federal internal revenue  
32 code as in effect on September 1, 1996, and amendments thereto,  
33 related federal internal revenue rules or regulations, or other fed-  
34 eral law.

35 Sec. ~~4~~ 5. K.S.A. 2007 Supp. 40-4906 ~~and~~, 40-4909 ~~and~~ 79-3234 are  
36 hereby repealed.

37 Sec. ~~5~~ 6. This act shall take effect and be in force from and after its  
38 publication in the statute book.