

HOUSE BILL No. 2120

By Committee on Governmental Organization and Elections

1-20

9 AN ACT concerning insurance companies; relating to the disclosure of
10 information; amending K.S.A. 40-222 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 40-222 is hereby amended to read as follows: 40-
15 222. (a) Whenever the commissioner of insurance deems it necessary but
16 at least once every five years, the commissioner may make, or direct to
17 be made, an examination of the affairs and financial condition of any
18 insurance company in the process of organization, or applying for admis-
19 sion or doing business in this state.

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

28 (c) For the purpose of such examination, the commissioner of insur-
29 ance or the persons appointed by the commissioner, for the purpose of
30 making such examination shall have free access to the books and papers
31 of any such company that relate to its business and to the books and
32 papers kept by any of its agents and may examine under oath, which the
33 commissioner or the persons appointed by the commissioner are empow-
34 ered to administer, the directors, officers, agents or employees of any
35 such company in relation to its affairs, transactions and condition.

36 (d) The commissioner may also examine or investigate any person, or
37 the business of any person, in so far as such examination or investigation
38 is, in the sole discretion of the commissioner, necessary or material to the
39 examination of the company, but such examination or investigation shall
40 not infringe upon or extend to any communications or information ac-
41 corded privileged or confidential status under any other laws of this state.

42 (e) In lieu of examining a foreign or alien insurance company, the
43 commissioner of insurance may accept the report of the examination

1 made by or upon the authority of the company's state of domicile or port-
2 of-entry state until January 1, 1994. Thereafter, such reports as they relate
3 to financial condition may only be accepted if:

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

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

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

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

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

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

40 (j) Nothing contained in this act shall be construed to limit the com-
41 missioner's authority to use and, if appropriate, to make public any final
42 or preliminary examination report in the furtherance of any legal or reg-
43 ulatory action which the commissioner may, in the commissioner's sole

1 discretion, deem appropriate.

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

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

16 (A) Adopting the examination report as filed or with modification or
17 corrections. If the examination report reveals that the company is oper-
18 ating in violation of any law, regulation or prior order of the commissioner,
19 the commissioner may order the company to take any action the com-
20 missioner 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, doc-
23 umentation or information, and refile 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 doc-
26 umentation, data, information and testimony.

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

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

41 ~~Nothing contained in this act shall prevent or be construed as~~
42 ~~prohibiting~~ Upon request, the commissioner ~~from disclosing~~ shall disclose
43 the content of an examination report, preliminary examination report or

1 results, ~~or~~ *and* any matter relating thereto, to the insurance department
2 of this or any other state or country, or to law enforcement officials of
3 this or any other state or agency of the federal government at any time,
4 so long as such agency or office receiving the report or matters relating
5 thereto agrees in writing to hold it confidential and in a manner consistent
6 with this act.

7 (6) In the event the commissioner determines that regulatory action
8 is appropriate as a result of any examination, the commissioner may ini-
9 tiate any proceedings or actions as provided by law.

10 (7) All working papers, recorded information, documents and copies
11 thereof produced by, obtained by or disclosed to the commissioner or
12 any other person in the course of an examination made under this act
13 must be given confidential treatment and are not subject to subpoena and
14 may not be made public by the commissioner or any other person, except
15 to the extent otherwise specifically provided in K.S.A. 45-215 *et seq.* and
16 amendments thereto. Access ~~may~~ *shall* also be granted to the national
17 association of insurance commissioners. Such parties must agree in writ-
18 ing prior to receiving the information to provide to it the same confiden-
19 tial treatment as required by this section, unless the prior written consent
20 of the company to which it pertains has been obtained.

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

37 Sec. 2. K.S.A. 40-222 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the statute book.