

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 hospital liens;~~
3 ~~relating to notice and amount of claims; amending K.S.A. 65-407 and~~
4 ~~repealing the existing section.~~
5

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

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

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

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

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

1 state.

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

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

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

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

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

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

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

42 ~~(j) Nothing contained in this act shall be construed to limit the~~
43 ~~commissioner's authority to use and, if appropriate, to make public any~~

1 ~~final or preliminary examination report in the furtherance of any legal or~~
2 ~~regulatory action which the commissioner may, in the commissioner's sole~~
3 ~~discretion, deem appropriate.~~

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

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

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

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

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

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

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

42 ~~(5) (A) Except as provided in paragraph (B), nothing contained in this~~
43 ~~act shall prevent or be construed as prohibiting the commissioner from~~

1 ~~disclosing the content of an examination report, preliminary examination~~
2 ~~report or results, or any matter relating thereto, at any time to:~~

3 ~~(i) The insurance department of this or any other state or country;~~

4 ~~(ii) law enforcement officials of this or any other state or agency of~~
5 ~~the federal government or any other country; or~~

6 ~~(iii) officials of any agency of another country.~~

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

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

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

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

43 *Section 1. K.S.A. 65-407 is hereby amended to read as follows: 65-*

1 ***407. No such lien shall be effective unless a written notice***~~containing an~~
2 ~~itemized statement of all~~ ***setting forth the amount of all of the hospital's***
3 ***claims, the name and address of the injured person, the date of the***
4 ***accident; and the name and location of the hospital,***~~and the name of the~~
5 ~~person or persons, firm or firms, corporation or corporations alleged to be~~
6 ~~liable to the injured party for the injuries received,~~ ***shall be filed in the***
7 ***office of the clerk of the district court of the county in which such***
8 ***hospital is located, prior to the payment of any moneys to such injured***
9 ***person,***~~his such person's attorneys or legal representatives, as~~
10 ***compensation for such injuries;***~~nor unless the hospital shall also send, by~~
11 ~~registered or certified mail, postage prepaid, a copy of such notice with a~~
12 ~~statement of the date of filing thereof to the person or persons, firm or~~
13 ~~firms, corporation or corporations alleged to be liable to the injured party~~
14 ~~for the injuries sustained prior to the payment of any moneys to such~~
15 ~~injured person, his attorneys or legal representative, as compensation for~~
16 ~~such injuries. Such hospital shall mail a copy of such notice to any~~
17 ~~insurance carrier which has insured such person, firm or corporation~~
18 ~~against such liability, if the name and address shall be known. Such~~
19 ***hospital shall also send, by registered or certified mail, a copy of such***
20 ***notice to such patient upon whom emergency medical or other service***
21 ***has been performed, if the name and address of such patient shall be***
22 ***known to the hospital or can with reasonable diligence be ascertained.***

23 Sec. 2. K.S.A. ~~2013 Supp. 40-222~~ ***65-407*** is hereby repealed.

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