

HOUSE BILL No. 2126

By Committee on Insurance

1-26

1 AN ACT concerning insurance; relating to risk-based capital instructions;
2 property and casualty actuarial opinion law; amending K.S.A. 2014
3 Supp. 40-223j and 40-2c01 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Sec. 1. K.S.A. 2014 Supp. 40-223j is hereby amended to read as
7 follows: 40-223j. (a) The statement of actuarial opinion shall be provided
8 with the annual statement in accordance with the appropriate NAIC
9 property and casualty annual statement instructions and shall be treated as
10 a public document.

11 (b) (1) Any document, material or other information, in the control or
12 possession of the department that is furnished to the commissioner
13 pursuant to this act or obtained by the commissioner in an investigation
14 pursuant to this section shall be kept confidential by the commissioner.
15 Such information shall not be made public or subject to subpoena, other
16 than by the commissioner and then only for the purpose of enforcement
17 actions taken by the commissioner pursuant to this act or any other
18 provision of the insurance laws of this state.

19 ~~(2) (A) This subsection shall not be construed to limit the~~
20 ~~commissioner's authority to release the documents to the actuarial board~~
21 ~~for counseling and discipline so long as the material is required for the~~
22 ~~purpose of professional disciplinary proceedings and that the actuarial~~
23 ~~board for counseling and discipline establishes procedures satisfactory to~~
24 ~~the commissioner for preserving the confidentiality of the documents.~~

25 ~~(B) This subsection shall not be construed to limit the commissioner's~~
26 ~~authority to use the documents, materials or other information in~~
27 ~~furtherance of any regulatory or legal action brought as part of the~~
28 ~~commissioner's official duties.~~

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30 *commissioner's authority to release the documents to the actuarial board*
31 *for counseling and discipline so long as the material is required for the*
32 *purpose of professional disciplinary proceedings and that the actuarial*
33 *board for counseling and discipline establishes procedures satisfactory to*
34 *the commissioner for preserving the confidentiality of the documents.*

35 *(B) This subsection shall not be construed to limit the commissioner's*
36 *authority to use the documents, materials or other information in*

1 *furtherance of any regulatory or legal action brought as part of the*
2 *commissioner's official duties.*

3 (3) Neither the commissioner nor any person who received
4 documents, materials or other information while acting under the authority
5 of the commissioner shall be required to testify in any private civil action
6 concerning any confidential documents, materials or information subject to
7 paragraph (1).

8 (4) The commissioner may share or exchange any documents,
9 materials or other information, including confidential and privileged
10 documents referred to in paragraph (1), received in the performance of the
11 commissioner's duties under this act, with:

12 (A) The NAIC and its affiliates and subsidiaries;

13 (B) the actuarial board for counseling and discipline or any other
14 entity which regulates actuaries;

15 (C) other state, federal or international regulatory agencies; and

16 (D) other state, federal or international law enforcement authorities.

17 (5) (A) The sharing or exchanging of documents, materials or other
18 information under this subsection shall be conditioned upon the recipient's
19 authority and agreement to maintain the confidential and privileged status,
20 if any, of the documents, materials or other information being shared or
21 exchanged.

22 (B) No waiver of an existing privilege or claim of confidentiality in
23 the documents, materials or information shall occur as a result of
24 disclosure to the commissioner under this section or as a result of sharing
25 such documents, materials or information as authorized by this subsection.

26 (6) The commissioner of insurance is hereby authorized to adopt such
27 rules and regulations establishing protocols governing the exchange of
28 information as may be necessary to implement and carry out the provisions
29 of this act.

30 (c) The provisions of ~~paragraph (2) of subsection (b)(2)~~ shall expire
31 on July 1, ~~2013-2020~~, unless the legislature acts to reenact such provision.
32 The provisions of ~~paragraph (2) of subsection (b)(2)~~ shall be reviewed by
33 the legislature prior to July 1, ~~2013-2020~~.

34 (d) For the purposes of this section: (1) "Commissioner" shall mean
35 the commissioner of insurance.

36 (2) "NAIC" shall mean the national association of insurance
37 commissioners.

38 Sec. 2. K.S.A. 2014 Supp. 40-2c01 is hereby amended to read as
39 follows: 40-2c01. As used in this act:

40 (a) "Adjusted RBC report" means an RBC report which has been
41 adjusted by the commissioner in accordance with K.S.A. 40-2c04, and
42 amendments thereto.

43 (b) "Corrective order" means an order issued by the commissioner

1 specifying corrective actions which the commissioner has determined are
2 required to address an RBC level event.

3 (c) "Domestic insurer" means any insurance company or risk
4 retention group which is licensed and organized in this state.

5 (d) "Foreign insurer" means any insurance company or risk retention
6 group not domiciled in this state which is licensed or registered to do
7 business in this state pursuant to article 41 of chapter 40 of the Kansas
8 Statutes Annotated or K.S.A. 40-209, and amendments thereto.

9 (e) "NAIC" means the national association of insurance
10 commissioners.

11 (f) "Life and health insurer" means any insurance company licensed
12 under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated, and
13 amendments thereto, or a licensed property and casualty insurer writing
14 only accident and health insurance.

15 (g) "Property and casualty insurer" means any insurance company
16 licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the
17 Kansas Statutes Annotated, and amendments thereto, but shall not include
18 monoline mortgage guaranty insurers, financial guaranty insurers and title
19 insurers.

20 (h) "Negative trend" means, with respect to a life and health insurer, a
21 negative trend over a period of time, as determined in accordance with the
22 "trend test calculation" included in the RBC instructions defined in
23 subsection (j).

24 (i) "RBC" means risk-based capital.

25 (j) "RBC instructions" means the risk-based capital instructions
26 promulgated by the NAIC, which are in effect on December 31, ~~2013~~
27 ~~2014~~, or any later version promulgated by the NAIC as may be adopted by
28 the commissioner under K.S.A. 2014 Supp. 40-2c29, and amendments
29 thereto.

30 (k) "RBC level" means an insurer's company action level RBC,
31 regulatory action level RBC, authorized control level RBC, or mandatory
32 control level RBC where:

33 (1) "Company action level RBC" means, with respect to any insurer,
34 the product of 2.0 and its authorized control level RBC;

35 (2) "regulatory action level RBC" means the product of 1.5 and its
36 authorized control level RBC;

37 (3) "authorized control level RBC" means the number determined
38 under the risk-based capital formula in accordance with the RBC
39 instructions; and

40 (4) "mandatory control level RBC" means the product of .70 and the
41 authorized control level RBC.

42 (l) "RBC plan" means a comprehensive financial plan containing the
43 elements specified in K.S.A. 40-2c06, and amendments thereto. If the

1 commissioner rejects the RBC plan, and it is revised by the insurer, with or
2 without the commissioner's recommendation, the plan shall be called the
3 "revised RBC plan."

4 (m) "RBC report" means the report required by K.S.A. 40-2c02, and
5 amendments thereto.

6 (n) "Total adjusted capital" means the sum of:

7 (1) An insurer's capital and surplus or surplus only if a mutual
8 insurer; and

9 (2) such other items, if any, as the RBC instructions may provide.

10 (o) "Commissioner" means the commissioner of insurance.

11 Sec. 3. K.S.A. 2014 Supp. 40-223j and 40-2c01 are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.