

SENATE BILL No. 347

By Committee on Ways and Means

1-30

1 AN ACT concerning insurance; relating to financial examinations;
2 pertaining to requirements for contracts with consultants, specialists or
3 other professionals for the purpose of conducting an examination;
4 examination fees; examiner compensation; amending K.S.A. 2019
5 Supp. 40-222 and 40-223 and repealing the existing sections.

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

8 Section 1. K.S.A. 2019 Supp. 40-222 is hereby amended to read as
9 follows: 40-222. (a) Whenever the commissioner of insurance deems it
10 necessary, but at least once every five years, the commissioner may make,
11 or direct to be made, a financial examination of any insurance company in
12 the process of organization, ~~or~~ applying for admission or doing business in
13 this state. In addition, at the commissioner's discretion the commissioner
14 may make, or direct to be made, a market regulation examination of any
15 insurance company doing business in this state.

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

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

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

1 accorded privileged or confidential status under any other laws of this
2 state.

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

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

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

18 (f) Upon determining that an examination should be conducted, the
19 commissioner or the commissioner's designee shall appoint one or more
20 examiners to perform the examination and instruct them as to the scope of
21 the examination. *The commissioner may appoint employees of the*
22 *department as examiners, whose compensation and expenses shall be*
23 *borne by the company that is the subject of the examination in accordance*
24 *with K.S.A. 40-223, and amendments thereto, or the commissioner may*
25 *retain consultants to act as examiners as set forth in subsection (h).* In
26 conducting an examination of financial condition, the examiner shall
27 observe those guidelines and procedures set forth in the *most current*
28 *edition of the examiners' handbook* adopted by the national association of
29 insurance commissioners. The commissioner may also employ such other
30 guidelines or procedures as the commissioner may deem appropriate.

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

39 (h) When making an examination under this act, the commissioner
40 may *also* retain attorneys, appraisers, independent actuaries, independent
41 certified public accountants, *independent financial analysts* or other
42 professionals and specialists as examiners, the reasonable cost of which
43 shall be borne by the company ~~which~~ *that* is the subject of the examination

1 *in accordance with K.S.A. 40-223(e), and amendments thereto. For the*
2 *purposes of this section and every other provision in chapter 40 of the*
3 *Kansas Statutes Annotated, and amendments thereto, that authorizes the*
4 *commissioner to retain services of attorneys, appraisers, actuaries,*
5 *certified public accounts, financial analysts, consultants, specialists or*
6 *other professionals, that the commissioner in his or her sole discretion*
7 *deems necessary in order to properly and adequately supervise, control*
8 *and regulate the business of insurance in this state, the commissioner shall*
9 *be exempt from the provisions of K.S.A. 75-430a, 75-3738, 75-3739, 75-*
10 *3740, 75-3743, 75-3744 and 75-37,130 et seq., and amendments thereto.*
11 *The commissioner is authorized but not required to develop rules and*
12 *regulations and procedures for purposes of retaining services of such*
13 *consultants, specialists or other professionals.*

14 (i) Nothing contained in this act shall be construed to limit the
15 commissioner's authority to terminate or suspend any examination in order
16 to pursue other legal or regulatory action pursuant to the insurance laws of
17 this state.

18 (j) Nothing contained in this act shall be construed to limit the
19 commissioner's authority to use and, if appropriate, to make public any
20 final or preliminary examination report in the furtherance of any legal or
21 regulatory action ~~which~~ that the commissioner may, in the commissioner's
22 sole discretion, deem appropriate.

23 (k) (1) No later than 30 days following completion of the examination
24 or at such earlier time as the commissioner shall prescribe, the examiner in
25 charge shall file with the department a verified written report of
26 examination under oath. No later than 30 days following receipt of the
27 verified report, the department shall transmit the report to the company
28 examined, together with a notice ~~which~~ that shall afford such company
29 examined a reasonable opportunity of not more than 30 days to make a
30 written submission or rebuttal with respect to any matters contained in the
31 examination report.

32 (2) Within 30 days of the end of the period allowed for the receipt of
33 written submissions or rebuttals, the commissioner shall fully consider and
34 review the report, together with any written submissions or rebuttals and
35 any relevant portions of the examiner's workpapers, and enter an order:

36 (A) Adopting the examination report as filed or with modification or
37 corrections. If the examination report reveals that the company is operating
38 in violation of any law, regulation or prior order of the commissioner, the
39 commissioner may order the company to take any action the commissioner
40 considers necessary and appropriate to cure such violations; or

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

1 (C) call and conduct a fact-finding hearing in accordance with K.S.A.
2 40-281, and amendments thereto, for purposes of obtaining additional
3 documentation, data, information and testimony.

4 (3) All orders entered as a result of revelations contained in the
5 examination report shall be accompanied by findings and conclusions
6 resulting from the commissioner's consideration and review of the
7 examination report, relevant examiner workpapers and any written
8 submissions or rebuttals. Within 30 days of the issuance of the adopted
9 report, the company shall file affidavits executed by each of its directors
10 stating under oath that they have received a copy of the adopted report and
11 related orders.

12 (4) Upon the adoption of the examination report, the commissioner
13 shall hold the content of the examination report as private and confidential
14 information for a period of 30 days except to the extent provided in
15 paragraph (5). Thereafter, the commissioner may open the report for public
16 inspection so long as no court of competent jurisdiction has stayed its
17 publication.

18 (5) (A) Except as provided in ~~paragraph~~*subparagraph* (B), nothing
19 contained in this act shall prevent or be construed as prohibiting the
20 commissioner from disclosing the content of an examination report,
21 preliminary examination report or results, or any matter relating thereto, at
22 any time to:

- 23 (i) The insurance department of this or any other state or country;
24 (ii) law enforcement officials of this or any other state or agency of
25 the federal government or any other country; or
26 (iii) officials of any agency of another country.

27 (B) The commissioner shall not share any information listed in
28 ~~paragraph~~*subparagraph* (A) unless the agency or office receiving the
29 report or matters relating thereto agrees in writing to hold it confidential
30 and in a manner consistent with this act.

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

34 (7) All working papers, recorded information, documents and copies
35 thereof produced by, obtained by or disclosed to the commissioner or any
36 other person in the course of an examination made under this act including
37 analysis by the commissioner pertaining to either the financial condition or
38 the market regulation of a company must be given confidential treatment
39 and are not subject to subpoena and may not be made public by the
40 commissioner or any other person, except to the extent otherwise
41 specifically provided in K.S.A. 45-215 et seq., and amendments thereto.
42 Access may also be granted to the national association of insurance
43 commissioners and its affiliates. Such parties must agree in writing prior to

1 receiving the information to provide to it the same confidential treatment
2 as required by this section, unless the prior written consent of the company
3 to which it pertains has been obtained.

4 (8) Whenever it appears to the commissioner of insurance from such
5 examination or other satisfactory evidence that the solvency of any such
6 insurance company is impaired, or that it is doing business in violation of
7 any of the laws of this state, or that its affairs are in an unsound condition
8 so as to endanger its policyholders, the commissioner of insurance shall
9 give the company a notice and an opportunity for a hearing in accordance
10 with the provisions of the Kansas administrative procedure act. If the
11 hearing confirms the report of the examination, the commissioner shall
12 suspend the certificate of authority of such company until its solvency
13 shall have been fully restored and the laws of the state fully complied with.
14 The commissioner may, if there is an unreasonable delay in restoring the
15 solvency of such company and in complying with the law, revoke the
16 certificate of authority of such company to do business in this state. Upon
17 revoking any such certificate, the commissioner shall commence an action
18 to dissolve such company or to enjoin the same from doing or transacting
19 business in this state.

20 Sec. 2. K.S.A. 2019 Supp. 40-223 is hereby amended to read as
21 follows: 40-223. (a) ~~(1) Except as provided in K.S.A. 40-110 and 40-253,~~
22 ~~and amendments thereto, any person who makes any examination under~~
23 ~~the provisions of this act may receive, as full compensation for such~~
24 ~~person's services, *When conducting examinations, examiners who are*~~
25 ~~*department employees shall be compensated on a per diem basis in an*~~
26 ~~amount fixed by the commissioner, ~~which~~ that shall not exceed the amount~~
27 ~~recommended by the national association of insurance commissioners, for~~
28 ~~such time necessarily and actually occupied in going to and returning from~~
29 ~~the place of such examination and for such time the examiner is~~
30 ~~necessarily and actually engaged in making such examination including~~
31 ~~any day within the regular workweek when the examiner would have been~~
32 ~~so engaged had the company or society been open for business, together~~
33 ~~with such necessary and actual expenses for traveling and subsistence as~~
34 ~~the examiner shall incur because of the performance of such services.~~

35 ~~(2) For the purposes of this act,~~

36 ~~(b) As used in this section:~~

37 ~~(1) "Necessary and actual expenses" shall be limited, whether for~~
38 ~~travel within the state or travel outside the state, to those limitations~~
39 ~~expressed in K.S.A. 75-3207, and amendments thereto, which pertain to~~
40 ~~official travel outside the state. The daily charge shall be calculated by~~
41 ~~dividing the amount the examiner is authorized by the commissioner of~~
42 ~~insurance to charge per week by the number of days in the regular~~
43 ~~workweek of the company or society being examined.~~

1 (b)(1) ~~All of such compensation~~

2 (2) *"Compensation" includes regular amounts paid to the employee*
3 *for salary, expenses, the employer's share of the federal insurance*
4 *contributions act taxes, the employer's contribution to the Kansas public*
5 *employees retirement system as provided in K.S.A. 74-4920, and*
6 *amendments thereto, the self-insurance assessment for the workers*
7 *compensation act as provided in K.S.A. 44-576, and amendments thereto,*
8 *the employer's cost of the state health care benefits program under K.S.A.*
9 *75-6507 75-6513, and amendments thereto, and a pro rata amount*
10 *determined by the commissioner to provide vacation and sick leave for the*
11 *examiner not to exceed the number of days allowed state officers and*
12 *employees in the classified service pursuant to regulations promulgated in*
13 *accordance with the Kansas civil service act, all outside consulting and*
14 *data processing fees necessary to perform any examination, and a pro rata*
15 *amount determined by the commissioner not to exceed an annual*
16 *aggregate of \$18,000 to fund the purchase, maintenance and enhancement*
17 *of examination equipment and computer software shall be paid to the*
18 *commissioner of insurance by the insurance company or society so*
19 *examined, on demand of the commissioner.*

20 (2) ~~The amount paid for all outside consulting and data processing~~
21 ~~fees necessary to perform any financial examination at any one company~~
22 ~~or society, including examination of such company's or society's~~
23 ~~subsidiaries or any combination thereof, and the pro rata amount to fund~~
24 ~~the purchase of examination equipment and computer software shall not~~
25 ~~collectively total more than:~~

26 (A) ~~\$50,000 for any insurance company or society which has less~~
27 ~~than \$200,000,000 in gross premiums, both direct and assumed, in the~~
28 ~~preceding calendar year; or~~

29 (B) ~~\$500,000 for any insurance company or society which has~~
30 ~~\$200,000,000 or more in gross premiums, both direct and assumed, in the~~
31 ~~preceding calendar year.~~

32 (3) ~~The amount paid for all outside consulting and data processing~~
33 ~~fees necessary to perform any market regulation examination at any one~~
34 ~~company or society, including examination of such company's or society's~~
35 ~~subsidiaries, or any combination thereof, and the pro rata amount to fund~~
36 ~~the purchase of examination equipment and computer software shall not~~
37 ~~collectively total more than \$25,000.~~

38 (3) *"Commissioner" means the commissioner of insurance.*

39 (4) *"Department" means the insurance department.*

40 (c) *The commissioner may request the company that is the subject of*
41 *the examination pay to the commissioner all necessary and actual*
42 *expenses incurred by department employees appointed as examiners, all*
43 *compensation paid to employees appointed as examiners for time*

1 *traveling to conduct the examination and for time spent actually engaged*
2 *in conducting the examination. The commissioner may also request the*
3 *company pay for a pro rata amount determined by the commissioner to*
4 *fund the purchase, maintenance and enhancement of examination*
5 *equipment and computer software.*

6 ~~(e)~~(d) Such demand shall be accompanied by the sworn statement of
7 the person making such examination, setting forth in separate items the
8 number of days necessarily and actually occupied in going to and returning
9 from the place of such examination, the number of days the examiners
10 were necessarily and actually engaged in making such examination
11 including those days within the regular workweek while the examination
12 was in progress and the company or society had closed for business, and
13 the necessary and actual expenses for traveling and subsistence, incurred
14 in and on account of such services.

15 ~~(d)~~(e) A duplicate of every such sworn statement shall be kept on file
16 in the office of the commissioner of insurance. All moneys so paid to the
17 commissioner of insurance shall be remitted to the state treasurer in
18 accordance with the provisions of K.S.A. 75-4215, and amendments
19 thereto. Upon receipt of each such remittance, the state treasurer shall
20 deposit the entire amount in the state treasury to the credit of the insurance
21 company examination fund. The state treasurer shall issue duplicate
22 receipts therefor, one to be delivered to the commissioner of insurance and
23 the other to be filed with the director of accounts and reports.

24 (f) *All amounts charged and expenses incurred by independent*
25 *consultants used as examiners pursuant to K.S.A. 40-222, and*
26 *amendments thereto, and data processing fees charged by any third party*
27 *as part of an examination shall be paid directly by the company that is the*
28 *subject of the examination. Invoices for such amounts detailing time*
29 *worked and necessary and actual expenses shall be submitted to the*
30 *commissioner for approval and then forwarded to the company for*
31 *payment.*

32 Sec. 3. K.S.A. 2019 Supp. 40-222 and 40-223 are hereby repealed.

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