

60-3351. Insurance compliance self-evaluative privilege. (a) Except as provided in K.S.A. 60-3352 and 60-3353, and amendments thereto, an insurance compliance self-evaluative audit document is privileged information and is not discoverable, or admissible as evidence in any legal action in any civil, criminal or administrative proceeding. The privilege created herein is a matter of substantive law of this state and is not merely a procedural matter governing civil or criminal procedures in the courts of this state.

(b) If any insurance company, person, or entity performs or directs the performance of an insurance compliance audit, an officer, employee or agent involved with the insurance compliance audit, or any consultant who is hired for the purpose of performing the insurance compliance audit, may not be examined in any civil, criminal or administrative proceeding as to the insurance compliance audit or any insurance compliance self-evaluative audit document, as defined in this section. This subsection (b) shall not apply if the privilege set forth in subsection (a) of this section is determined under K.S.A. 60-3352 and 60-3353, and amendments thereto, not to apply.

(c) Any insurance company may voluntarily submit, in connection with any examination conducted under chapter 40 of the Kansas Statutes Annotated, and amendments thereto, an insurance compliance self-evaluative audit document to the commissioner as a confidential document in the same manner as provided in chapter 40 of the Kansas Statutes Annotated, and amendments thereto, for documents required to be provided to the commissioner in the course of an examination by the commissioner without waiving the privilege set forth in this section to which the insurance company would otherwise be entitled. Any provision in chapter 40 of the Kansas Statutes Annotated, and amendments thereto, permitting the commissioner to make confidential documents public or to grant the national association of insurance commissioners access to confidential documents shall not apply to the insurance compliance self-evaluative audit document voluntarily submitted by an insurance company. To the extent that the commissioner has the authority to compel the disclosure of an insurance compliance self-evaluative audit document under other provisions of applicable law, any such report furnished to the commissioner shall not be provided to any other persons or entities and shall be accorded the same confidentiality and other protections as provided above for voluntarily submitted documents. Any use of an insurance compliance self-evaluative audit document furnished as a result of a request of the commissioner under a claim of authority to compel disclosure shall be limited to determining whether or not any disclosed defects in an insurers' policies and procedures or inappropriate treatment of customers has been remedied or that an appropriate plan for their remedy is in place.

(1) Any insurance company's insurance compliance self-evaluative audit document submitted to the commissioner shall remain subject to all applicable statutory or common law privileges including, but not limited to, the work product doctrine, attorney-client privilege, or the subsequent remedial measures exclusion.

(2) Any compliance self-evaluative audit document so submitted and in the possession of the commissioner shall remain the property of the insurance company and shall not be subject to any disclosure or production under the Kansas open records act. The provision of this paragraph shall expire on July 1, 2015, unless the legislature reenacts such provision. The provision of this paragraph shall be reviewed by the legislature prior to July 1, 2015.

(d) Disclosure of an insurance compliance self-evaluative audit document to a governmental agency, whether voluntary or pursuant to compulsion of law, shall not constitute a waiver of the privilege set forth in subsection (a) with respect to any other persons or any other governmental agencies. Nothing in this act shall prohibit the division of post audit from having access to all insurance compliance self-evaluative audit documents in the custody of the commissioner.

History: L. 2005, ch. 148, § 1; L. 2010, ch. 112, § 5; July 1.