

2021 Kansas Statutes

40-4308. Examination of companies; report; orders; confidentiality. (a) Whenever the commissioner deems it necessary, but at least once every three years, the commissioner may make, or direct to be made, a financial examination of any captive insurance company in the process of organization, or applying for admission or doing business in Kansas. The commissioner may engage in continuous analysis for the preparation of the examination. In addition, at the commissioner's discretion, the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in Kansas.

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

(c) The commissioner shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner shall be empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition.

(d) For the purpose of such analysis, the commissioner may require reports and other documents be filed with the commissioner.

(e) The commissioner may also examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company, but such examination or investigation shall not infringe upon or extend to any communications or information accorded privileged or confidential status under any other laws of this state.

(f) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

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

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

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

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule and regulation or prior order of the commissioner, the commissioner may order the company to

take any action the commissioner considers necessary and appropriate to cure such violations;

(B) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information; or

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

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

(4) Upon the adoption of the examination report of an association captive insurance company, the commissioner shall hold the content of the examination report as private and confidential as to the pure captive insurance company. Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's discretion, deem appropriate.

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

(j) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this act. The commissioner may grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of Kansas or any other state or agency of the federal government at any time. Access may also be granted to the national association of insurance commissioners and its affiliates, and the international association of insurance supervisors and its affiliates. Persons receiving such information must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

(k) The commissioner may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the national association of insurance commissioners, and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information. Documents received pursuant to this section shall not be subject to disclosure pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this subsection shall expire on July 1, 2023, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2023.

History: L. 1988, ch. 156, § 8; L. 2018, ch. 50, § 42; July 1.

