

40-3308. Confidentiality of information and documents disclosed to or filed with commissioner. (a) Documents, materials or other information obtained by or disclosed to the commissioner of insurance or any other person in the course of an examination or investigation made pursuant to K.S.A. 40-3307, and amendments thereto, and all information reported pursuant to K.S.A. 40-3304, 40-3305 and 40-3306, and amendments thereto, shall:

- (1) Be confidential and privileged;
- (2) not be subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto;
- (3) not be subject to subpoena; and
- (4) not be subject to discovery or admissible in evidence in any private civil action.

(b) The commissioner of insurance shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner of insurance, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, determines that the interests of policyholders, shareholders or the public would be served by the publication thereof, in which event the commissioner of insurance may publish all or any part thereof in such a manner as the commissioner of insurance may deem appropriate. In making such determination, the commissioner of insurance also shall take into consideration any potential adverse consequences of the disclosure thereof.

(c) Neither the commissioner of insurance nor any person who received documents, materials or other information while acting under the authority of the commissioner of insurance or with whom such documents, materials or other information are shared pursuant to this section shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a).

(d) In order to assist in the performance of the commissioner of insurance's duties, the commissioner of insurance:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with other state, federal and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, including members of any supervisory college described in K.S.A. 2014 Supp. 40-3316, and amendments thereto, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) notwithstanding the provisions of paragraph (1) above, the commissioner of insurance may only share confidential and privileged documents, material or information reported pursuant to subsection (1) of K.S.A. 40-3305, and amendments thereto, with the commissioner of insurance or corresponding official of any state having statutes or regulations substantially similar to subsections (a) and (b), and who has agreed in writing not to disclose such information;

(3) 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; and

(4) shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to this act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act, including procedures and protocols for sharing by the national association of insurance commissioners with other state, federal or international regulators;

(ii) specify that ownership of information shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act remains with the commissioner of insurance, and the national association of insurance commissioners' use of the information is subject to the direction of the commissioner of insurance;

(iii) require prompt notice to be given to an insurer and its affiliates whose confidential information in the possession of the national association of insurance commissioners, pursuant to this act, is subject to a request or subpoena to the national association of insurance commissioners for disclosure or production; and

(iv) require the national association of insurance commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer and its affiliates shared with the national association of insurance commissioners and its affiliates and subsidiaries pursuant to this act.

(e) The sharing of information by the commissioner of insurance, pursuant to this act, shall not constitute a delegation of regulatory authority or rule-making authority, and the commissioner of insurance is solely responsible for the administration, execution and enforcement of the provisions of this act.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner of insurance under this act or as a result of sharing as authorized in subsection (d).

(g) Documents, materials or other information in the possession or control of the national association of insurance commissioners shall be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(h) The provisions of this section shall not be subject to the provisions of K.S.A. 45-229, and amendments thereto.

History: L. 1974, ch. 183, § 8; L. 1988, ch. 356, § 121; L. 1992, ch. 288, § 5; L. 2013, ch. 15, § 8; July 1.