

As Amended by Senate Committee

Session of 2014

HOUSE BILL No. 2515

By Committee on Insurance

1-27

1 AN ACT concerning insurance; pertaining to confidentiality of certain
2 documents; amending K.S.A. 2013 Supp. 40-222 *hospital liens;*
3 *relating to notice and amount of claims; amending K.S.A. 65-407* and
4 repealing the existing section.

5

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

7 Section 1. K.S.A. 2013 Supp. 40-222 is hereby amended to read as
8 follows: 40-222. (a) Whenever the commissioner of insurance deems it
9 necessary but at least once every five years, the commissioner may make,
10 or direct to be made, a financial examination of any insurance company in
11 the process of organization, or applying for admission or doing business in
12 this state. In addition, at the commissioner's discretion the commissioner
13 may make, or direct to be made, a market regulation examination of any
14 insurance company doing business in this state.

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

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

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

1 state.

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

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

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

17 (f) Upon determining that an examination should be conducted, the
18 commissioner or the commissioner's designee shall appoint one or more
19 examiners to perform the examination and instruct them as to the scope of
20 the examination. In conducting an examination of financial condition, the
21 examiner shall observe those guidelines and procedures set forth in the
22 examiners' handbook adopted by the national association of insurance
23 commissioners. The commissioner may also employ such other guidelines
24 or procedures as the commissioner may deem appropriate.

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

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

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

42 (j) Nothing contained in this act shall be construed to limit the
43 commissioner's authority to use and, if appropriate, to make public any

1 final or preliminary examination report in the furtherance of any legal or
2 regulatory action which the commissioner may, in the commissioner's sole
3 discretion, deem appropriate.

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

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

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

22 (B) rejecting the examination report with directions to the examiners
23 to reopen the examination for purposes of obtaining additional data,
24 documentation or information, and refiling pursuant to subsection (k); or

25 (C) call and conduct a fact finding hearing in accordance with K.S.A.
26 40-281, and amendments thereto, for purposes of obtaining additional
27 documentation, data, information and testimony.

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

36 (4) Upon the adoption of the examination report, the commissioner
37 shall hold the content of the examination report as private and confidential
38 information for a period of 30 days except to the extent provided in
39 paragraph (5). Thereafter, the commissioner may open the report for public
40 inspection so long as no court of competent jurisdiction has stayed its
41 publication.

42 (5) (A) Except as provided in paragraph (B), nothing contained in this
43 act shall prevent or be construed as prohibiting the commissioner from

1 disclosing the content of an examination report, preliminary examination
2 report or results, or any matter relating thereto, at any time to:
3 (i) The insurance department of this or any other state or country;
4 (ii) law enforcement officials of this or any other state or agency of
5 the federal government or any other country; or
6 (iii) officials of any agency of another country.
7 (B) The commissioner shall not share any information listed in
8 paragraph (A) unless the agency or office receiving the report or matters
9 relating thereto agrees in writing to hold it confidential and in a manner
10 consistent with this act.

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

14 (7) All working papers, recorded information, documents and copies
15 thereof produced by, obtained by or disclosed to the commissioner or any
16 other person in the course of an examination made under this act including
17 analysis by the commissioner pertaining to either the financial condition or
18 the market regulation of a company must be given confidential treatment
19 and are not subject to subpoena and may not be made public by the
20 commissioner or any other person, except to the extent otherwise
21 specifically provided in K.S.A. 45-215 et seq., and amendments thereto.
22 Access may also be granted to the national association of insurance
23 commissioners and its affiliates. Such parties must agree in writing prior to
24 receiving the information to provide to it the same confidential treatment
25 as required by this section, unless the prior written consent of the company
26 to which it pertains has been obtained.

27 (8) Whenever it appears to the commissioner of insurance from such
28 examination or other satisfactory evidence that the solvency of any such
29 insurance company is impaired, or that it is doing business in violation of
30 any of the laws of this state, or that its affairs are in an unsound condition
31 so as to endanger its policyholders, the commissioner of insurance shall
32 give the company a notice and an opportunity for a hearing in accordance
33 with the provisions of the Kansas administrative procedure act. If the
34 hearing confirms the report of the examination, the commissioner shall
35 suspend the certificate of authority of such company until its solvency
36 shall have been fully restored and the laws of the state fully complied with.
37 The commissioner may, if there is an unreasonable delay in restoring the
38 solvency of such company and in complying with the law, revoke the
39 certificate of authority of such company to do business in this state. Upon
40 revoking any such certificate the commissioner shall commence an action
41 to dissolve such company or to enjoin the same from doing or transacting
42 business in this state.

43 Section 1. K.S.A. 65-407 is hereby amended to read as follows: 65-

1 **407. No such lien shall be effective unless a written notice containing an**
2 **itemized statement of all setting forth the amount of all of the hospital's**
3 **claims, the name and address of the injured person, the date of the**
4 **accident; and the name and location of the hospital;** and the name of the
5 **person or persons, firm or firms, corporation or corporations alleged to be**
6 **liable to the injured party for the injuries received, shall be filed in the**
7 **office of the clerk of the district court of the county in which such**
8 **hospital is located, prior to the payment of any moneys to such injured**
9 **person,—his such person's attorneys or legal representatives, as**
10 **compensation for such injuries;** nor unless the hospital shall also send, by
11 **registered or certified mail, postage prepaid, a copy of such notice with a**
12 **statement of the date of filing thereof to the person or persons, firm or**
13 **firms, corporation or corporations alleged to be liable to the injured party**
14 **for the injuries sustained prior to the payment of any moneys to such**
15 **injured person, his attorneys or legal representative, as compensation for**
16 **such injuries.** Such hospital shall mail a copy of such notice to any
17 **insurance carrier which has insured such person, firm or corporation**
18 **against such liability, if the name and address shall be known.** Such
19 **hospital shall also send, by registered or certified mail, a copy of such**
20 **notice to such patient upon whom emergency medical or other service**
21 **has been performed, if the name and address of such patient shall be**
22 **known to the hospital or can with reasonable diligence be ascertained.**

23 Sec. 2. K.S.A. 2013 Supp. 40-222 **65-407** is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its
25 publication in the statute book.