

2023 Kansas Statutes

40-4348. Same; examinations; reports. (a) Whenever the commissioner of insurance deems it necessary, but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any special purpose insurance captive. 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 this state.

(b) In scheduling and determining the nature, scope and frequency of examinations of financial condition, the commissioner shall consider such matters, such 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 and in effect when the commissioner exercises discretion under this subsection.

(c) The commissioner, for the purpose of making such examination or analysis, 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 is 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 to 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 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, rules and regulations 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, and refiling pursuant to subsection (k); 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 examination report shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers 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, the commissioner shall hold the content of the examination report as private and confidential information for a period of 30 days. Thereafter, the commissioner may open the report for public inspection, so long as no court of competent jurisdiction has stayed its publication. 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 sole 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 Kansas.

(j) K.S.A. 40-4350, and amendments thereto, shall apply to the confidentiality of all 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 act, including analyses by the commissioner pertaining to either the financial condition or the market regulation.

History: L. 2018, ch. 50, § 31; July 1.