

**As Amended by House Committee**

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*Session of 2005*

**HOUSE BILL No. 2771**

By Committee on Insurance

1-31

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10 AN ACT concerning licensing of insurance agents; pertaining to certain  
11 states' license revocation for nonpayment of income tax; amending  
12 K.S.A. 2005 Supp. 40-4906 and 40-4909 and repealing the existing  
13 sections.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) The commissioner of insurance shall furnish to  
17 the secretary of revenue a list of all insurance agents licensed pursuant  
18 to the provisions of K.S.A. 2005 Supp. 40-4906, and amendments thereto,  
19 for the states identified in subsection (b). The list shall contain for each  
20 licensee the licensee's:

- 21 (1) Name and address;  
22 (2) social security number or taxpayer identification number or fed-  
23 eral employer identification number, whichever is applicable; and  
24 (3) date of license renewal.

25 (b) The commissioner of insurance shall certify to the secretary of  
26 revenue a list of those states which withhold nonresident license renewal  
27 for Kansas insurance agents pending proof of filing income tax returns by  
28 such Kansas insurance agents in the nonresident state.

29 (c) Such list shall be provided electronically in the format required  
30 by the secretary of revenue ~~not less than 60 days prior to the renewal~~  
31 ~~date. Within 30 days of receipt of such list from the.~~ **The** commissioner,  
32 the secretary of revenue shall review the listed licensees for income tax  
33 delinquency and shall mail a notice of income tax delinquency to any  
34 licensee who is delinquent in the payment of income taxes or the filing  
35 of income tax returns and to the commissioner. The secretary of revenue  
36 shall notify the commissioner promptly whenever any listed licensee has  
37 satisfied the income tax delinquency.

38 (d) Notwithstanding any provision of law prohibiting disclosure by  
39 the secretary of revenue of the contents of taxpayer records or informa-  
40 tion and notwithstanding any confidentiality statute administered by the  
41 commissioner, all information exchanged among or disclosed by the sec-  
42 retary of revenue to the commissioner of insurance pursuant to this sub-  
43 section is lawful.

1 (e) The information obtained by the commissioner from the secretary  
2 of revenue as authorized by subsection (c) shall be used only for the  
3 purpose authorized by this section. Any person employed by, or formerly  
4 employed, by the commissioner and who receives such information shall  
5 be subject to the provisions of K.S.A. 79-3234, and amendments thereto,  
6 or K.S.A. 79-3614, and amendments thereto, as applicable, with respect  
7 to any confidential taxpayer information, and shall be subject to the same  
8 duty of confidentiality with respect to such confidential information im-  
9 posed by law on officers and employees of the department of revenue  
10 and shall be subject to any civil or criminal penalties imposed by law for  
11 violations of such duty of confidentiality.

12 (f) this section shall be supplemental to and a part of the uniform  
13 insurance agents licensing act.

14 Sec. 2. K.S.A. 2005 Supp. 40-4906 is hereby amended to read as  
15 follows: 40-4906. (a) Unless denied, *suspended, revoked or refused re-*  
16 *newal* licensure pursuant to K.S.A. 2005 Supp. 40-4909, and amendments  
17 thereto, a nonresident person shall receive a nonresident agent license if:

18 (1) Such person is currently licensed as a resident and in good stand-  
19 ing in such person's home state;

20 (2) such person has submitted the proper request for licensure and  
21 has paid to the commissioner a nonrefundable application fee of \$30 and  
22 a biennial fee of \$50;

23 (3) such person has submitted or transmitted to the commissioner of  
24 insurance a copy of the application for licensure that such person sub-  
25 mitted to such person's home state, or in lieu of the same, a completed  
26 application on a form prescribed by the commissioner; and

27 (4) such person's home state awards a nonresident agent license to  
28 residents of this state on the same basis.

29 (b) The commissioner may verify the insurance agent's licensing  
30 status through the producer database maintained by the NAIC, its affil-  
31 iates or subsidiaries.

32 (c) (1) Any nonresident agent who is licensed in this state and who  
33 moves from one state to another state or a resident agent who moves  
34 from this state to another state shall file with the commissioner within 30  
35 days a change of address and provide certification from the new resident  
36 state.

37 (2) Any insurance agent who resides in this state and who moves from  
38 this state to another state shall file with the commissioner within 30 days  
39 a change of address and provide certification from the new resident state.

40 (3) No fee or license application shall be required for any filing re-  
41 quired by this subsection.

42 (d) Subject to the provisions of subsection (a), any person licensed as  
43 a surplus lines agent in such person's home state shall receive a nonres-

1 ident surplus lines agent license. Except as provided in subsection (a),  
2 nothing in this section shall be construed to amend or supersede any  
3 provision of K.S.A. 40-246b and amendments thereto.

4 (e) Subject to the provisions of subsection (a), any person licensed as  
5 a limited line credit insurance or other type of limited lines agent in such  
6 person's home state shall receive a nonresident limited lines agent license  
7 in this state granting the same scope of authority as granted under the  
8 license issued by the such insurance agent's home state.

9 Sec. 3. K.S.A. 2005 Supp. 40-4909 is hereby amended to read as  
10 follows: 40-4909. (a) The commissioner may deny, suspend, revoke or  
11 refuse renewal of any license issued under this act if the commissioner  
12 finds that the applicant or license holder has:

13 (1) Provided incorrect, misleading, incomplete or untrue information  
14 in the license application.

15 (2) Violated:

16 (A) Any provision of chapter 40 of the Kansas Statutes Annotated,  
17 and amendments thereto, or any rule and regulation promulgated  
18 thereunder;

19 (B) any subpoena or order of the commissioner;

20 (C) any insurance law or regulation of another state; or

21 (D) any subpoena or order issued by the regulatory official for insur-  
22 ance in another state.

23 (3) Obtained or attempted to obtain a license under this act through  
24 misrepresentation or fraud.

25 (4) Improperly withheld, misappropriated or converted any moneys  
26 or properties received in the course of doing insurance business.

27 (5) Intentionally misrepresented the provisions, terms and conditions  
28 of an actual or proposed insurance contract or application for insurance.

29 (6) Been convicted of a misdemeanor or felony.

30 (7) Admitted to or been found to have committed any insurance un-  
31 fair trade practice or fraud in violation of K.S.A. 40-2404 and amendments  
32 thereto.

33 (8) Used any fraudulent, coercive, or dishonest practice, or demon-  
34 strated any incompetence, untrustworthiness or financial irresponsibility  
35 in the conduct of business in this state or elsewhere.

36 (9) Had an insurance agent license, or its equivalent, denied, sus-  
37 pended or revoked in any other state, district or territory.

38 (10) Forged another person's name to an application for insurance or  
39 to any document related to an insurance transaction.

40 (11) Improperly used notes or any other reference material to com-  
41 plete an examination for an insurance license issued under this act.

42 (12) Knowingly accepted insurance business from an individual who  
43 is not licensed.

1 (13) Failed to comply with any administrative or court order imposing  
2 a child support obligation upon the applicant or license holder.

3 (14) Failed to pay any state income tax or comply with any adminis-  
4 trative or court order directing payment of state income tax.

5 (15) Rebated the whole or any part of any insurance premium or  
6 offered in connection with the presentation of any contract of insurance  
7 any other inducement not contained in the contract of insurance.

8 (16) Made any misleading representation or incomplete comparison  
9 of policies to any person for the purposes of inducing or tending to induce  
10 such person to lapse, forfeit or surrender such person's insurance then in  
11 force.

12 (b) In addition, the commissioner may suspend, revoke or refuse re-  
13 newal of any license issued under this act if the commissioner finds that  
14 the interests of the insurer or the insurable interests of the public are not  
15 properly served under such license.

16 (c) *Except as provided in subsection (e)*, any action taken under this  
17 section which affects any license or imposes any administrative penalty  
18 shall be taken only after notice and an opportunity for a hearing con-  
19 ducted in accordance with the provisions of the Kansas administrative  
20 procedures act.

21 (d) The license of any business entity may be suspended, revoked or  
22 refused renewal if the insurance commissioner finds that any violation  
23 committed by an individual licensee employed by or acting on behalf of  
24 such business entity was known by or should have been known by one or  
25 more of the partners, officers or managers acting on behalf of the business  
26 entity and:

27 (1) Such violation was not reported to the insurance commissioner  
28 by such business entity; or

29 (2) such business entity failed to take any corrective action.

30 (e) *Whenever the commissioner receives a notice of income tax delin-*  
31 *quency from the secretary of revenue pursuant to section 1, and amend-*  
32 *ments thereto, pertaining to a nonresident agent licensee the commissioner*  
33 *shall deny, suspend, revoke or refuse renewal of any license of such non-*  
34 *resident agent licensee.*

35 (f) None of the following actions shall deprive the commissioner of  
36 any jurisdiction or right to institute or proceed with any disciplinary pro-  
37 ceeding against such license, to render a decision suspending, revoking  
38 or refusing to renew such license, or to establish and make a record of  
39 the facts of any violation of law for any lawful purpose:

40 (1) The imposition of an administrative penalty under this section;

41 (2) the lapse or suspension of any license issued under this act by  
42 operation of law;

43 (3) the licensee's failure to renew any license issued under this act;

1 or

2 (4) the licensee's voluntary surrender of any license issued under this  
3 act. No such disciplinary proceeding shall be instituted against any li-  
4 censee after the expiration of two years from the termination of the  
5 license.

6 ~~(f)~~ (g) Whenever the commissioner imposes any administrative pen-  
7 alty or denies, suspends, revokes or refuses renewal of any license pur-  
8 suant to subsection (a), any costs incurred as a result of conducting an  
9 administrative hearing authorized under the provisions of this section  
10 shall be assessed against the person who is the subject of the hearing or  
11 any business entity represented by such person who is the party to the  
12 matters giving rise to the hearing. As used in this subsection, "costs" shall  
13 include witness fees, mileage allowances, any costs associated with the  
14 reproduction of documents which become a part of the hearing record  
15 and the expense of making a record of the hearing.

16 ~~(g)~~ (h) No person whose license as an agent or broker had been sus-  
17 pended or revoked shall be employed by any insurance company doing  
18 business in this state either directly, indirectly, as an independent con-  
19 tractor or otherwise to negotiate or effect contracts of insurance, sure-  
20 tyship or indemnity or perform any act toward the solicitation of or trans-  
21 action of any business of insurance during the period of such suspension  
22 or revocation.

23 ~~(h)~~ (i) In lieu of taking any action under subsection (a), the commis-  
24 sioner may:

25 (1) Censure the person; or

26 (2) issue an order imposing an administrative penalty up to a maxi-  
27 mum of \$500 for each violation but not to exceed \$2,500 for the same  
28 violation occurring within any six consecutive calendar months from the  
29 date of the original violation unless such person knew or should have  
30 known that the violative act could give rise to disciplinary action under  
31 subsection (a). If such person knew or reasonably should have known the  
32 violative act could give rise to any disciplinary proceeding authorized by  
33 subsection (a), the commissioner may impose a penalty up to a maximum  
34 of \$1,000 for each violation but not to exceed \$5,000 for the same violation  
35 occurring within any six consecutive calendar months from the date of  
36 the imposition of the original administrative penalty.

37 Sec. 4. K.S.A. 2005 Supp. 40-4906 and 40-4909 are hereby repealed.

38 Sec. 5. This act shall take effect and be in force from and after its  
39 publication in the statute book.