

HOUSE BILL No. 2007

AN ACT concerning insurance holding companies; amending K.S.A. 40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-3311 and 40-3311a and repealing the existing sections.

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

New Section 1. (a) With respect to any insurer registered under K.S.A. 40-3305, and amendments thereto, and in accordance with subsection (d), the commissioner of insurance shall have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this act.

(b) The powers of the commissioner of insurance with respect to supervisory colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college;
- (2) clarifying the membership and participation of other supervisors in the supervisory college;
- (3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities and processes for information sharing;
- (5) establishing a crisis management plan; and
- (6) establishing a regular assessment to the insurer for the payment of expenses incurred pursuant to subsection (c).

(c) Each registered insurer subject to this section shall be liable for and shall pay the expenses, including reasonable expenses for necessary travel, the commissioner of insurance reasonably incurred with respect to the participation in a supervisory college in accordance with subsection (d). A supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates.

(d) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with K.S.A. 40-3307, and amendments thereto, the commissioner of insurance may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner of insurance may enter into agreements in accordance with K.S.A. 40-3308, and amendments thereto, providing the basis for cooperation between the commissioner of insurance and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner of insurance to regulate or supervise the insurer or its affiliates within the jurisdiction of the supervisory college.

New Sec. 2. K.S.A. 40-3301 through 40-3315, and sections 1 and 2, and amendments thereto, shall be known and may be cited as the insurance holding company act.

Sec. 3. K.S.A. 40-3302 is hereby amended to read as follows: 40-3302. As used in this act, unless the context otherwise requires:

(a) “Affiliate” of, or person “affiliated” with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, ~~or~~ is controlled by, or is under common control with, the person specified.

(b) “Commissioner of insurance” means the commissioner of insurance, the commissioner’s deputies, or the insurance department, as appropriate.

(c) “Control” including the terms “controlling,” “controlled by” and “under common control with,”; means the possession, direct or indirect, of the power to direct or cause the direction of the management ~~and or~~ policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (k) of

K.S.A. 40-3305, and amendments thereto, that control does not exist in fact. The commissioner of insurance may determine, after a hearing in accordance with the provisions of the Kansas administrative procedure act, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) “Enterprise risk” means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital to fall into company action level RBC, as such term is defined in either K.S.A. 40-2c01 et seq., and amendments thereto, or K.S.A. 40-2d01 et seq., and amendments thereto, as appropriate, or would cause the insurer to be in hazardous financial condition as set forth in K.S.A. 40-222b, 40-222c and 40-222d, and amendments thereto.

(e) “Insurance holding company system” means two or more affiliated persons, one or more of which is an insurer.

~~(f)~~ (f) “Insurer” means any corporation, company, association, society, fraternal benefit society, health maintenance organization, nonprofit medical and hospital service corporation, nonprofit dental service corporation, reciprocal exchange, person or partnership writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or loss except lodges, societies, persons or associations transacting business pursuant to the provisions of K.S.A. 40-202, and amendments thereto.

~~(g)~~ (g) “Person” means an individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

~~(h)~~ (h) “Securityholder” of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~(i)~~ (i) “Subsidiary” of a specified person means an affiliate controlled by such person directly, or indirectly, through one or more intermediaries.

~~(j)~~ (j) “Voting security” means any security convertible into or evidencing a right to acquire a voting security.

Sec. 4. K.S.A. 40-3304 is hereby amended to read as follows: 40-3304. (a) (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly~~, or by conversion or by exercise of any right to acquire~~, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.

(2) For the purposes of this section:

(A) A domestic insurer shall include any person controlling a domestic insurer unless such person as determined by the commissioner of insurance is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~For the purposes of this section,~~

(B) “Person” shall not include any securities broker holding, in the usual and customary broker’s function, less than 20% of the voting securities of ~~an~~ the insurance company or of any person which controls ~~an~~ the insurance company.

(b) The statement to be filed with the commissioner of insurance hereunder shall be made under oath or affirmation, shall be accompanied by a nonrefundable filing fee of \$1,000 and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) ~~of this section~~ is to be affected, hereinafter called “acquiring party,”; and:

(A) If such person is an individual, such individual’s principal occupation ~~and~~, all offices and positions held *by such individual* during the past five years and any conviction of crimes other than minor traffic violations during the past 10 years;

(B) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A) ~~of this subsection~~;

(2) the source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose including any pledge of the insurer’s stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, except that where a source of such consideration is a loan made in the lender’s ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets ~~or~~, merge or consolidate it with any person or to make any other material change ~~in~~ *to* its business ~~or~~, corporate structure or management;

(5) the number of shares of any security referred to in subsection (a) ~~of this section~~ which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) ~~of this section~~, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in subsection (a) ~~of this section~~ which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) ~~of this section~~ in which any acquiring party is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in subsection (a) ~~of this section~~ during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in subsection (a) ~~of this section~~ made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any se-

curities referred to in subsection (a) ~~of this section~~, and, if distributed, of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) ~~of this section~~ for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) *an agreement by the person required to file the statement referred to in subsection (a) that such person will provide the annual report, specified in subsection (l) of K.S.A. 40-3305, and amendments thereto, for so long as control exists;*

(13) *an acknowledgment by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within its control in the insurance holding company system will provide to the commissioner of insurance upon request such information as the commissioner of insurance deems necessary to evaluate enterprise risk to the insurer; and*

(14) such additional information as the commissioner of insurance may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) ~~of this section~~ is a partnership, limited partnership, syndicate or other group, the commissioner of insurance may require that the information called for by paragraphs (1) through ~~(12)~~ (14) of subsection (b) ~~of this section~~ shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) ~~of this section~~ is a corporation, the commissioner of insurance may require that the information called for by paragraphs (1) through ~~(12)~~ (14) of subsection (b) ~~of this section~~ shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner of insurance and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner of insurance and sent to such insurer within two business days after the person learns of such change.

(c) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) ~~of this section~~ is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) ~~of this section~~ may utilize such documents in furnishing the information called for by that statement.

(d) (1) The commissioner of insurance shall approve any merger or other acquisition of control referred to in subsection (a) ~~of this section~~ unless, after a public hearing thereon conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) ~~of this section~~ would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

(C) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets ~~or~~, consolidate or merge it with any person, or to make any other material change in its business ~~or~~, corporate structure or management, are unfair and unreasonable to policyholders of the insurer ~~and~~ or are not in the public interest; or

(D) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be

in the interest of policyholders of the insurer ~~and~~ or of the public to permit the merger or other acquisition of control; or

(E) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in paragraph (1) of subsection (d) ~~of this section~~ shall be held as soon as practical after the statement required by this subsection (a) ~~of this section~~ is filed, and at least 20 days' notice thereof shall be given by the commissioner of insurance to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner of insurance. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in accordance with the Kansas administrative procedure act. In the absence of intervention, such insurer or person shall have the right to present oral or written statements in accordance with subsection (c) of K.S.A. 77-523, and amendments thereto.

(3) *If the proposed acquisition of control will require the approval of more than one commissioner of insurance, the public hearing referred to in paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). Such person shall file the statement referred to in subsection (a) with the national association of insurance commissioners within five days of making the request for a public hearing. A commissioner of insurance may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of insurance of the states in which the insurers are domiciled. Such commissioners of insurance shall hear and receive evidence. A commissioner of insurance may attend such hearing in person or by telecommunication.*

(4) *As a condition of a change of control of a domestic insurer, any determination by the commissioner of insurance that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to subsection (a).*

(5) The commissioner of insurance may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the ~~commissioner's staff as may~~ staff of the commissioner of insurance as the commissioner of insurance deems to be reasonably necessary to assist the commissioner of insurance in reviewing the proposed acquisition of control.

(e) The provisions of this section shall not apply to:

Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as:

(1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

(2) as otherwise not comprehended within the purposes of this section.

(f) The following shall be violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) ~~of this section~~; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner of insurance has given the ~~commissioner's~~ requisite approval thereto.

(g) The courts of this state are hereby vested with jurisdiction over every securityholder of a domestic insurer and every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner of insurance under this section and over all actions involving such person arising out of violations of this section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner of insurance to be such person's true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of

violations of this section. Copies of all such lawful process shall be served on the commissioner of insurance and transmitted by registered or certified mail by the commissioner of insurance to such person at such person's last known address.

Sec. 5. K.S.A. 40-3305 is hereby amended to read as follows: 40-3305.

(a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner of insurance, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year unless the commissioner of insurance for good cause shown extends the time for registration, and then within such extended time. The commissioner of insurance may require any authorized insurer which is a member of ~~a~~ *an insurance* holding company system and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (c) or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) *Pursuant to subsection (a)*, every insurer subject to registration shall file a registration statement on a form provided by the commissioner of insurance, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force and transactions currently outstanding or which ~~have~~ occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management agreements ~~and~~, service contracts and ~~all~~ cost sharing arrangements;

(F) reinsurance agreements;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements.

(4) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner of insurance;

(5) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(6) *if requested by the commissioner of insurance, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the securities act of 1933, as amended, or the securities exchange act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner of insurance with the most recently filed parent corporation financial statements that have been filed with the SEC;*

(7) *statements that the insurer's board of directors and principal officers oversee corporate governance and internal controls and that the insurer's principal officers have approved, implemented and continue to maintain and monitor corporate governance and internal control procedures; and*

(8) *any other information required by the commissioner of insurance by rules and regulations.*

(c) All registration statements shall ~~contain~~ *be accompanied by* a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purpose of this section. Unless the commissioner of insurance by rules and regulations or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees, involving .5% or less of an insurer's admitted assets as of the December 31 ~~next immediately~~ *preceding shall not be deemed material be deemed immaterial* for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in such insurer's registration statement by reporting all material changes or additions on amendment forms provided by the commissioner of insurance within 15 days after the end of the month in which it learns of each such change or addition, except each registered insurer shall report all dividends and other distributions to shareholders within five business days following its declaration. Any such dividend or distribution shall not be paid for at least 10 business days from the commissioner's receipt of the notice of its declaration.

(f) Any person within an insurance holding company system subject to registration shall ~~be required to~~ provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this act.

(g) The commissioner of insurance shall terminate the registration of any insurer which demonstrates that such insurer no longer is a member of an insurance holding company system.

(h) The commissioner of insurance may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

(i) The commissioner of insurance may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any information or transaction if and to the extent the commissioner of insurance by *rule and regulation or order* shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner of insurance a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner of insurance disallows such a disclaimer. The commissioner of insurance shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

(l) (1) Except as provided in paragraph (2), the ultimate controlling person of every insurer subject to registration also shall file an annual enterprise risk report. The report, to the best of the ultimate controlling person's knowledge and belief, shall identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of insurance of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners. The first enterprise risk report shall be filed no later than May 1, 2015, and annually thereafter by May 1 of each year unless the commissioner of insurance extends the time for filing for good cause shown.

(2) The ultimate controlling person of an insurer with total direct and assumed annual premiums of less than \$300 million is not required to submit an enterprise risk report.

(m) The failure of an insurer or an ultimate controlling person of the

insurer to file a registration statement, any summary of the registration statement or enterprise risk filing within the specified time for filing shall be a violation by the insurer or by the ultimate controlling person of the insurer, as applicable.

Sec. 6. K.S.A. 40-3306 is hereby amended to read as follows: 40-3306.

(a) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable;
 (2) *agreements for cost-sharing services and management shall include such provisions as required by rules and regulations adopted by the commissioner of insurance.*

(3) the charges or fees for services performed shall be reasonable;
~~(3) (4) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied with respect to such transactions shall be allocated to the insurer in conformity with the requirements of K.S.A. 40-225, and amendments thereto;~~

~~(4) (5) the books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and~~

~~(5) (6) the insurer's surplus as regards policyholders following any transactions, dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.~~

(b) The following transactions involving a domestic insurer and any person in such insurer's *insurance* holding company system may not be entered into unless the insurer has notified the commissioner of *insurance* in writing of such insurer's intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the commissioner of *insurance* may permit, and the commissioner of *insurance* has not disapproved such transaction within such period.

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders; or

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31 ~~next~~ immediately preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31 ~~next~~ immediately preceding.

(3) Reinsurance agreements or modifications thereto, *including:*

(A) *All reinsurance pooling agreements; and*

(B) *agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next three consecutive years equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31 ~~next~~ immediately preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;*

(4) all management agreements, service contracts, *tax allocation agreements* and all cost-sharing arrangements; and

(5) any material transactions, specified by ~~regulation~~ *rules and regulations*, which the commissioner of *insurance* determines may adversely affect the interests of ~~the~~ *an* insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any

transactions which, in the case of an insurer not a member of the same *insurance* holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the *insurance* holding company system if the purpose of those separate transactions is to avoid the ~~statutory~~ threshold amount *required under this section* and thus avoid the review that would occur otherwise. If the commissioner of *insurance* determines that such separate transactions were entered into over any ~~12-month~~ 12-month period for such purpose, the commissioner of *insurance* may exercise authority under K.S.A. 40-3311, and amendments thereto.

(d) The commissioner of *insurance*, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a), and whether ~~they~~ *such transactions* may adversely affect the interests of policyholders.

(e) The commissioner of *insurance* shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.

(f) *A transaction subject to approval by the commissioner of insurance pursuant to K.S.A. 40-3304, and amendments thereto, shall not be subject to the requirements of this section.*

(g) (1) No insurer subject to registration under K.S.A. 40-3305, and amendments thereto, shall pay any extraordinary dividend or make any other extraordinary distribution to such insurer's shareholders until:

(A) Thirty days after the commissioner of insurance has received notice of the declaration thereof and has not within such period disapproved such payment; or

(B) the commissioner of insurance ~~shall have~~ *has* approved such payment within such 30-day period.

(2) (A) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, ~~whose~~ *the* fair market value of *which*, together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of: ~~(A)~~

(i) Ten percent of such insurer's surplus as regards policyholders as of December 31 ~~next~~ *immediately* preceding; or ~~(B)~~

(ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains for the 12-month period ending December 31 ~~next~~ *immediately* preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(B) *In determining whether a dividend or distribution is extraordinary, an insurer, other than a life insurer, may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.*

(C) An extraordinary dividend or distribution shall also include any dividend or distribution made or paid out of any funds other than earned surplus arising from the insurer's business, as defined in K.S.A. 40-233, and amendments thereto. The provisions of K.S.A. 40-233, and amendments thereto, shall not be construed so as to prohibit an insurer, subject to registration under K.S.A. 40-3305, and amendments thereto, from making or paying an extraordinary dividend or distribution in accordance with this section.

(3) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the ~~commissioner's approval thereof, and such a declaration shall confer~~ *no approval of the commissioner of insurance. No declaration shall confer any rights* upon shareholders until:

(A) The commissioner of insurance has approved the payment of such dividend or distribution; or

(B) the commissioner of insurance has not disapproved such payment within the 30-day period referred to above.

~~(g)~~ (h) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be re-

lieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of K.S.A. 40-3306, and amendments thereto.

~~(H)~~ (i) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size and performance of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves;

(10) the quality and liquidity of investments in affiliates. The commissioner of insurance may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the ~~commissioner's judgment of the commissioner of insurance~~ such investment so warrants; and

(11) the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

Sec. 7. K.S.A. 40-3307 is hereby amended to read as follows: 40-3307.

(a) Subject to the limitation contained in this section and in addition to the powers which the commissioner of insurance has under K.S.A. 40-222 and K.S.A. 40-222a, *and amendments thereto*, relating to the examination of insurers, the commissioner of insurance shall ~~also~~ have the power to ~~order any insurer registered under K.S.A. 40-3305 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner of insurance shall have the power to examine such affiliates to obtain such information~~ *examine any insurer registered under K.S.A. 40-3305, and amendments thereto, and such insurer's affiliates to ascertain the financial condition, including enterprise risk, of such insurer.*

(b) (1) The commissioner of insurance ~~shall exercise his power under subsection (A) of this section only if the examination of the insurer under K.S.A. 40-222 or K.S.A. 40-222a is inadequate or the interests of the policyholders of such insurer may be adversely affected~~ *may order any insurer registered under K.S.A. 40-3305, and amendments thereto, to produce such records, books or other information in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this act.*

(2) *To determine compliance with this act, the commissioner of insurance may order any insurer registered under K.S.A. 40-3305, and amendments thereto, to produce information not in the possession of the insurer, if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations or another method. In the event the insurer cannot obtain the information requested by the commissioner of insurance, the insurer shall provide the commissioner of insurance a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner of insurance that the detailed explanation is without merit, the commissioner of insurance may require, after notice*

and hearing, the insurer to pay a penalty of not more than \$1,000 for each day's delay, or may suspend or revoke the license of the insurer.

(c) The commissioner of insurance may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the ~~commissioner's staff as shall~~ *staff of the commissioner of insurance as the commissioner of insurance shall determine* to be reasonably necessary to assist in the conduct of the examination under subsection (a) ~~of this section~~. Any persons so retained shall be under the direction and control of the commissioner of insurance and shall act in a purely advisory capacity.

(d) Each registered insurer producing examination records, books and papers pursuant to subsection (a) ~~of this section~~ shall be liable for and shall pay the expense of such examination in accordance with K.S.A. 40-223 and K.S.A. 40-253.

(e) *The commissioner of insurance shall have the power to issue subpoenas, administer oaths and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner of insurance may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person subpoenaed shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. Such subpoenaed person shall be entitled to the same fees and mileage, if claimed, as a witness in K.S.A. 28-125, and amendments thereto. Fees, mileage and actual expense, if any, necessarily incurred in securing the attendance and testimony of witnesses shall be itemized, charged against and paid by the company being examined.*

Sec. 8. K.S.A. 40-3308 is hereby amended to read as follows: 40-3308. ~~All information, documents and copies thereof 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. 40-3305 and amendments thereto, shall be given confidential treatment and shall not be subject to subpoena. Such information, documents and copies thereto shall not be made public by the commissioner of insurance, the national association of insurance commissioners or any other person, except to insurance departments of other states and as otherwise provided in this section, without the prior written consent of the insurer to which it pertains. If 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 will be served by the publication thereof, the commissioner may publish all or any part thereof in such a manner as the commissioner may deem appropriate.~~*(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 section 1, 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.

Sec. 9. K.S.A. 40-3309 is hereby amended to read as follows: 40-3309. The commissioner of insurance, upon notice and opportunity for all interested persons to be heard, may issue such rules; *and* regulations and orders as shall be necessary to carry out the provisions of this act. Hearings on orders, as defined in subsection (d) of K.S.A. 77-502, and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 10. K.S.A. 40-3311 is hereby amended to read as follows: 40-3311. (a) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection (a) of K.S.A. 40-3305 or subsections (c) or (d) of K.S.A. 40-3306, and amendments thereto, or which otherwise violates this act, shall pay, in such directors' or officers' individual capacity, a civil forfeiture of not more than \$5,000 per violation, after notice and hearing before the commissioner of insurance. In determining the amount of the civil forfeiture, the commissioner of insurance shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(b) Whenever it appears to the commissioner of insurance that any insurer subject to this act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to K.S.A. 40-3306, and amendments thereto, and which would not have been approved had such approval been requested, the commissioner of insurance may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner ~~may also~~ of insurance also may order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(c) Whenever it appears to the commissioner of insurance that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this act, the commissioner of insurance may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state, then by the district court for Shawnee county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this act may be fined not more than \$50,000. Any individual who willfully violates this act may be fined in individual capacity not more than \$10,000 or, be imprisoned for not more than one to three years, or both.

(d) Any officer, director or employee of an insurance holding company system who knew or reasonably should have known they were subscribing to or making or causing to be made any false statements, false reports or false filings with the intent to deceive the commissioner of insurance in the performance of duties under this act, upon conviction thereof, shall be imprisoned for not more than five to 10 years or fined \$100,000, or both. Any fines imposed shall be paid by the officer, director or employee in such person's individual capacity.

Sec. 11. K.S.A. 40-3311a is hereby amended to read as follows: 40-3311a. On and after July 1, 1993, when it appears to the commissioner

of insurance that any person has committed a violation of this act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner *of insurance* may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as the commissioner *of insurance* finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Sec. 12. K.S.A. 40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-3311 and 40-3311a are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.