

HOUSE BILL No. 2136

By Committee on Insurance and Pensions

1-26

1 AN ACT concerning insurance; relating to the regulation of the business
2 thereof; ~~granting the commissioner the power to subpoena witnesses~~
3 ~~and order depositions when conducting certain investigations~~; updating
4 certain definitions relating to service contracts and surplus lines
5 insurance; interest rate calculations relating to nonforfeiture law for
6 individual deferred annuities; application requirements for certification
7 of utilization review organizations; requirements for out-of-state risk
8 retention groups to do business in state; applications for registration of
9 professional employer organizations; repealing the automobile club
10 services act; amending K.S.A. ~~40-103~~, 40-22a04, 40-22a06 and 40-
11 4103 and K.S.A. 2020 Supp. 40-201a, 40-246i, 40-4,104, 40-22a05 and
12 44-1704 and repealing the existing sections; also repealing K.S.A. 40-
13 2405, 40-2501, 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-
14 2507, 40-2508, 40-2509, 40-2510, 40-2511, 40-2512 and 40-2513.

15

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

17 Section 1. ~~K.S.A. 40-103 is hereby amended to read as follows: 40-~~
18 ~~103. (a) The commissioner of insurance shall have the:~~

19 ~~(1) General supervision, control and regulation of corporations,~~
20 ~~companies, associations, societies, exchanges, partnerships, or persons~~
21 ~~authorized to transact the business of insurance, indemnity or suretyship in~~
22 ~~this state; and shall have the~~

23 ~~(2) power to make all reasonable rules and regulations necessary to~~
24 ~~enforce the laws of this state relating thereto.~~

25 ~~(b) The commissioner shall have the authority to:~~

26 ~~(1) Make investigations and examinations:~~

27 ~~(A) In connection with any application for registration or licensure of~~
28 ~~any person or entity under the laws of this state or any registration or~~
29 ~~licensure already granted; or~~

30 ~~(B) whenever it appears to the commissioner, upon the basis of a~~
31 ~~complaint or information, that reasonable grounds exist for the belief that~~
32 ~~an investigation or examination is necessary or advisable to provide more~~
33 ~~complete protection to the public;~~

34 ~~(2) appoint investigators to aid in investigations conducted pursuant~~

1 ~~to this subsection and K.S.A. 2020 Supp. 40-113, and amendments thereto;~~

2 ~~(3) subpoena witnesses and compel such witnesses to attend and~~
 3 ~~testify;~~

4 ~~(4) compel the production of books, records and other documents;~~
 5 ~~and~~

6 ~~(5) order depositions to be taken of any witness residing within or~~
 7 ~~outside the state, in the manner prescribed by law for depositions in civil~~
 8 ~~actions, and make such depositions returnable to the commissioner.~~

9 ~~(e) If any person does not appear or refuses to testify, file a~~
 10 ~~statement, produce records or otherwise does not obey a subpoena issued~~
 11 ~~by the commissioner, the commissioner may apply to any court of~~
 12 ~~competent jurisdiction to enforce compliance with the subpoena. The court~~
 13 ~~may:~~

14 ~~(1) Hold the person in contempt;~~

15 ~~(2) order the person to appear before the commissioner;~~

16 ~~(3) order the person to testify about the matter under investigation or~~
 17 ~~in question;~~

18 ~~(4) order the production of records;~~

19 ~~(5) grant injunctive relief, including restricting or prohibiting the~~
 20 ~~transaction of the business of insurance;~~

21 ~~(6) impose a civil penalty of not greater than \$2,000 for each~~
 22 ~~violation; or~~

23 ~~(7) grant any other necessary or appropriate relief.~~

24 **Sec. 2. Section 1.** K.S.A. 2020 Supp. 40-201a is hereby amended to
 25 read as follows: 40-201a. (a) The marketing, sale, offering for sale,
 26 issuance, making, proposing to make and administration of a service
 27 contract shall not be construed to be the business of insurance and shall be
 28 exempt from regulation as insurance pursuant to chapter 40 of the Kansas
 29 Statutes Annotated, and amendments thereto.

30 (b) ~~For the purposes of~~ **As used in** this section:

31 (1) "Service contract" means a contract or agreement for a separate or
 32 additional consideration, for any specified duration, to service, repair,
 33 replace or maintain all or any part of any structural component, appliance
 34 or utility system of any residential property, consumer good or other
 35 property; or to indemnify for service, repair, replacement or maintenance
 36 for consumer good or other property, due to a defect in materials,
 37 workmanship, normal wear and tear; or as a result of power surges or as a
 38 result of accidental damage from the handling of any consumer good or
 39 other property, with or without additional provision for indemnity
 40 payments, when service repair or replacement is not reasonably,
 41 commercially or economically feasible. A service contract may also
 42 include additional provisions for incidental payment of indemnity under
 43 limited circumstances, including, but not limited to, towing, rental and

1 emergency road service.

2 (2) "Service contract" also includes any nonconsumer commercial
3 service contract.

4 ~~(3) "Service contract" does not include an automobile club service as~~
5 ~~defined in K.S.A. 40-2507, and amendments thereto.~~

6 ~~(4)~~—"Service contract" includes, but is not limited to, a contract that
7 offers any one or more of the following services:

8 (A) The repair or replacement of tires or wheels on a motor vehicle
9 damaged as a result of coming into contact with road hazards;

10 (B) the removal of dents, dings or creases on a motor vehicle that can
11 be repaired using the process of paintless dent removal without affecting
12 the existing paint finish and without replacing vehicle body panels,
13 sanding, bonding or painting; and

14 (C) the replacement of a motor vehicle key or key-fob in the event
15 that the key or key-fob becomes inoperable or is lost or stolen.

16 ~~(5)~~**(4) "Service contract" does not include an automobile club**
17 **service contract. As used in this paragraph, "automobile club service**
18 **contract" means a contract that provides, in consideration of dues,**
19 **assessments or periodic payments of money, promises to assist in**
20 **matters relating to travel and the operation, use and maintenance of**
21 **an automobile by supplying features or services or reimbursement**
22 **thereof, including, but not limited to:**

23 (A) Such services as community traffic safety service, travel and
24 touring service, theft or reward service, map service, towing service,
25 emergency road service, bail bond service and legal fee
26 reimbursement service in the defense of traffic offenses. Such services
27 shall not be subject to the insurance laws of this state if provided by
28 the promisor itself;

29 (B) features including the purchase of accidental injury and death
30 benefits insurance coverage issued, as provided by applicable statutes,
31 by an insurance company authorized to do business in Kansas; or

32 (C) such other features or services not deemed by the
33 commissioner to constitute the business of insurance.

34 (5) "Road hazard" means a hazard that is encountered while driving a
35 motor vehicle, including, but not be limited to, potholes, rocks, wood
36 debris, metal parts, glass, plastic, curbs or composite scraps.

37 (c) (1) No service contract that is exempt from regulation as
38 insurance pursuant to chapter 40 of the Kansas Statutes Annotated, and
39 amendments thereto, pursuant to this section shall contain any provision
40 for consequential damages unless such consequential damages are caused
41 by the failure of service, repair, replacement or maintenance rendered
42 under the service contract.

43 (2) No service contract that is exempt from regulation as insurance

1 pursuant to chapter 40 of the Kansas Statutes Annotated, and amendments
2 thereto, pursuant to this section shall contain any provision, except as
3 exempt by this section, that would otherwise be covered by a contract of
4 property or liability insurance issued in this state.

5 Sec. ~~3~~ 2. K.S.A. 2020 Supp. 40-246i is hereby amended to read as
6 follows: 40-246i. The following definitions shall apply to K.S.A. 40-246b
7 through 40-246e, and amendments thereto, and K.S.A. 2020 Supp. 40-
8 246g, and amendments thereto:

9 (a) "Exempt commercial purchaser" means any person purchasing
10 commercial insurance that, at the time of placement, meets the following
11 requirements:

12 (1) The person employs or retains a qualified risk manager to
13 negotiate insurance coverage;

14 (2) the person has paid aggregate nationwide commercial property
15 and casualty insurance premiums in excess of \$100,000 in the immediately
16 preceding 12 months; and

17 (3) the person:

18 (A) Possesses a net worth in excess of \$20,040,000, except that this
19 amount shall be adjusted every five years by ~~rules and regulations of~~
20 *publication in the Kansas register* by the commissioner of insurance to
21 account for the percentage change in the consumer price index;

22 (B) generates annual revenues in excess of \$55,100,000, except that
23 this amount shall be adjusted every five years by ~~rules and regulations of~~
24 *publication in the Kansas register* by the commissioner of insurance to
25 account for the percentage change in the consumer price index;

26 (C) employs more than 500 full-time or full-time-equivalent
27 employees per insured entity or is a member of an affiliated group
28 employing more than 1,000 employees in the aggregate;

29 (D) is a not-for-profit organization or public entity generating annual
30 budgeted expenditures of at least \$33,060,000, except that this amount
31 shall be adjusted every five years by ~~rules and regulations of~~ *publication*
32 *in the Kansas register* by the commissioner of insurance to account for the
33 percentage change in the consumer price index; or

34 (E) is a municipality with a population in excess of 50,000 persons.

35 (b) "Home state": (1) In general, except as provided in subparagraph
36 (2), the term "home state" means, with respect to an insured:

37 (A) The state in which an insured maintains its principal place of
38 business or, in the case of an individual, the individual's principal
39 residence; or

40 (B) if 100% of the insured risk is located out of the state referred to in
41 paragraph (1)(A), the state to which the greatest percentage of the insured's
42 taxable premium for that insurance contract is allocated.

43 (2) ~~Affiliated groups~~—If more than one insured from an affiliated

1 group are named insureds on a single non-admitted insurance contract, the
2 term "home state" means the home state, as determined pursuant to
3 paragraph (1), of the member of the affiliated group that has the largest
4 percentage of premium attributed to it under such insurance contract.

5 (c) "Nonadmitted insurer" means an insurer that is not authorized or
6 admitted to transact the business of insurance under the law of the home
7 state, but does not include a risk retention group as that term is defined in
8 15 U.S.C. § 3901(a)(4), as in effect on July 1, 2015.

9 (d) "Principal place of business" means, with respect to determining
10 the home state of the insured, the state where the insured maintains its
11 headquarters and where the insured's high-level officers direct, control and
12 coordinate the business activities of the insured.

13 (e) "Surplus lines insurance" means insurance procured by a surplus
14 lines licensee from a surplus lines insurer as permitted under the law of the
15 home state. "Surplus lines insurance" shall also mean excess lines
16 insurance as may be defined by applicable state law.

17 ~~(f) This section shall take effect on and after January 1, 2016.~~

18 ~~Sec. 4-3.~~ K.S.A. 2020 Supp. 40-4,104 is hereby amended to read as
19 follows: 40-4,104. The minimum values as specified in K.S.A. 2020 Supp.
20 40-4,105, 40-4,106, 40-4,107, 40-4,108 and 40-4,110, and amendments
21 thereto, of any paid-up annuity, cash surrender or death benefits available
22 under an annuity contract shall be based upon minimum nonforfeiture
23 amounts as defined in this section ~~and amendments thereto.~~

24 (a) (1) The minimum nonforfeiture amount at any time at or prior to
25 the commencement of any annuity payments shall be equal to an
26 accumulation up to such time at rates of interest as indicated in subsection
27 (b) of the net considerations, as hereinafter defined, paid prior to such
28 time, decreased by the sum of subparagraphs (A) through (D) ~~below~~:

29 (A) Any prior withdrawals from or partial surrenders of the contract
30 accumulated at rates of interest as indicated in subsection (b).

31 (B) An annual contract charge of \$50, accumulated at rates of interest
32 as indicated in subsection (b).

33 (C) Any premium tax paid by the company for the contract,
34 accumulated at rates of interest as indicated in subsection (b).

35 (D) The amount of any indebtedness to the company on the contract,
36 including interest due and accrued.

37 (2) The net considerations for a given contract year used to define the
38 minimum nonforfeiture amount shall be an amount equal to 87.5% of the
39 gross considerations credited to the annuity contract during that contract
40 year.

41 (b) The interest rate used in determining minimum nonforfeiture
42 amounts shall be an annual rate of interest determined as the lesser of three
43 percent per annum and the following, which shall be specified in the

1 annuity contract if the interest rate will be reset:

2 (1) The five-year constant maturity treasury rate reported by the
3 federal reserve as of a date, or average over a period, rounded to the
4 nearest $\frac{1}{20}$ th of one percent, specified in the contract no longer than 15
5 months prior to the annuity contract's issue date or redetermination date of
6 ~~paragraph (4) of subsection (b) of this section and amendments thereto~~(4);

7 (2) reduced by 125 basis points;

8 (3) where the resulting interest rate is not less than ~~one percent~~ 15
9 *basis points or 0.15%*; and

10 (4) the interest rate shall apply for an initial period and may be
11 redetermined for additional periods. The redetermination date, basis and
12 period, if any, shall be stated in the annuity contract. The basis is the date
13 or average over a specified period that produces the value of the five-year
14 constant maturity treasury rate to be used at each redetermination date.

15 (c) During the period or term that an annuity contract provides
16 substantive participation in an equity indexed benefit, such annuity
17 contract may increase the reduction described in ~~paragraph (2) of~~
18 subsection (b) ~~above~~(2) by up to an additional 100 basis points to reflect
19 the value of the equity index benefit. The present value at the issue date of
20 such annuity contract, and at each redetermination date thereafter, of the
21 additional reduction shall not exceed the market value of the benefit. The
22 commissioner may require a demonstration that the present value of the
23 additional reduction does not exceed the market value of the benefit.
24 Lacking such a demonstration that is acceptable to the commissioner, the
25 commissioner may disallow or limit the additional reduction.

26 (d) The commissioner may adopt rules and regulations to implement
27 the provisions of subsection (c) ~~of this section, and amendments thereto,~~
28 and to provide for further adjustments to the calculation of minimum
29 nonforfeiture amounts for annuity contracts that provide substantive
30 participation in an equity index benefit and for such other annuity
31 contracts that the commissioner determines adjustments are justified.

32 ~~Sec. 5.~~ 4. K.S.A. 40-22a04 is hereby amended to read as follows: 40-
33 22a04. (a) The commissioner shall adopt rules and regulations, ~~with the~~
34 ~~advice of the advisory committee created by K.S.A. 40-22a05,~~ establishing
35 standards governing the conduct of utilization review activities performed
36 in this state or affecting residents *or healthcare providers* of this state by
37 utilization review organizations. Unless granted an exemption under
38 K.S.A. 40-22a06, *and amendments thereto*, no utilization review
39 organization may conduct utilization review services in this state or
40 affecting residents of this state ~~on or after May 1, 1995,~~ without first
41 obtaining a certificate from the commissioner.

42 (b) The commissioner shall not issue a certificate to a utilization
43 review organization until the applicant:

1 (1) Files a formal application for certification in such form and detail
2 as required by the commissioner and such application has been executed
3 under oath by the chief executive officer, *president or other head official*
4 of the applicant;

5 (2) files with the commissioner a certified copy of its charter or
6 articles of incorporation and bylaws, if any;

7 (3) states the location of the office or offices of the utilization review
8 organization where utilization review affecting residents or health care
9 providers of this state will be principally performed;

10 (4) provides a summary of the qualifications and experience of
11 persons performing utilization review affecting the persons and at the
12 locations identified pursuant to paragraph (3);

13 (5) makes payment of a certification fee of \$100 to the commission;
14 and

15 (6) provides such other information or documentation as the
16 commissioner requires.

17 (c) Certificates issued by the commissioner pursuant to this act shall
18 remain effective until suspended, surrendered or revoked subject to
19 payment of an annual continuation fee of \$50.

20 (d) The commissioner ~~with the advice of the advisory committee~~ may
21 suspend or revoke the certificate or any exemption from certification
22 requirements upon determination that the interests of Kansas insureds are
23 not being properly served under such certificate or exemption. Any such
24 action shall be taken only after a hearing conducted in accordance with the
25 provisions of the Kansas administrative procedure act.

26 ~~Sec. 6. 5. K.S.A. 2020 Supp. 40-22a05 is hereby amended to read as~~
27 ~~follows: 40-22a05. (a) There is hereby created an advisory committee~~
28 ~~which shall assist the commissioner in the adoption of rules and~~
29 ~~regulations to implement the provisions of this act. The advisory~~
30 ~~committee shall consist of 13 persons appointed by the commissioner as~~
31 ~~follows:~~

32 ~~(1) The commissioner, or the designee of the commissioner, who~~
33 ~~shall be the chairperson;~~

34 ~~(2) one member appointed from the public at large;~~

35 ~~(3) four members who are representatives of utilization review~~
36 ~~organizations; and~~

37 ~~(4) seven members who are representatives of health care providers,~~
38 ~~one of which shall be a representative of a Kansas hospital, and two of~~
39 ~~which shall be persons licensed to practice medicine and surgery in~~
40 ~~Kansas.~~

41 ~~(b) Members of the advisory committee shall be appointed for a term~~
42 ~~of three years, except that the first term of office of two members~~
43 ~~representing utilization review organizations and two members~~

1 representing health care providers shall be for a term of two years, and the
2 first term for two members representing health care providers and one
3 member representing utilization review organizations shall be for a term of
4 one year.

5 ~~(e) The advisory committee shall be attached to the insurance~~
6 ~~department, and all administrative functions of the advisory committee~~
7 ~~shall be under the direction and supervision of the commissioner. Within~~
8 ~~available appropriations therefor, members of the advisory committee shall~~
9 ~~be paid subsistence allowances, mileage and other expenses as provided in~~
10 ~~subsection (e) of K.S.A. 75-3223, and amendments thereto.~~

11 ~~(d) Before adopting rules and regulations to carry out the provisions~~
12 ~~of this act, the commissioner with the advice of the advisory committee~~
13 ~~shall:~~

14 ~~(1) Establish utilization review standards which provide for~~
15 ~~uniformity in the procedures for interaction between utilization review~~
16 ~~organizations and health care providers, payors and consumers of health~~
17 ~~care;~~

18 ~~(2) establish utilization review procedures that prevent unnecessary~~
19 ~~and inappropriate disruption to the health care delivery system;~~

20 ~~(3) strive to achieve an efficient process for the certification of~~
21 ~~utilization review organizations; and~~

22 ~~(4) specify the kinds of insurance or types of insurance products to~~
23 ~~which the standards apply and the scope of such application.~~

24 ~~(e) This act~~*The utilization review organization act* shall not apply to:

25 ~~(1)(a) Utilization review of health care services provided to patients~~
26 ~~under the authority of the Kansas workers compensation act, K.S.A. 44-~~
27 ~~501 et seq., and amendments thereto;~~

28 ~~(2)(b) reviews conducted by any insurance company, health~~
29 ~~maintenance organization, prepaid service plan, group-funded self-insured~~
30 ~~plan or similar entity solely for the purpose of determining compliance~~
31 ~~with the specific terms and conditions of an insurance policy, agreement or~~
32 ~~contract as a part of the normal claim settlement process; or~~

33 ~~(3)(c) any medical programs operated by the secretary for aging and~~
34 ~~disability services or any entity to the extent it is acting under contract~~
35 ~~with the secretary.~~

36 ~~Sec. 7. 6.~~ K.S.A. 40-22a06 is hereby amended to read as follows: 40-
37 22a06. (a) No certificate shall be required for utilization review activities
38 conducted by or on behalf of:

39 (1) An agency of the federal government;

40 (2) a person, agency or utilization review organization acting on
41 behalf of the federal government, but only to the extent such person,
42 agency or organization is providing services under federal regulation;

43 (3) a federally qualified health maintenance organization authorized

1 to transact business in Kansas—~~which~~ *that* is administering a quality
2 assurance program and performing utilization review activities for its own
3 members as required by 42 U.S.C. § 300e(c)(8) and 42 U.S.C. § 300e(c)
4 (6) respectively;

5 (4) a person employed or used by a utilization review organization
6 authorized to perform utilization review in Kansas, including, but not
7 limited to, individual nurses and other health care providers. This
8 exemption shall not apply with respect to individual persons performing
9 utilization review activities in conjunction with any insurance contract or
10 health benefit plan pursuant to a direct contractual relationship with a
11 health maintenance organization, group-funded self-insurance plan or
12 insurance company;

13 (5) a health benefit plan that is self-insured and qualified under the
14 federal employee retirement income security act of 1974 as amended;

15 (6) hospitals, home health agencies, clinics, private health care
16 provider offices or any other authorized health care facility or entity
17 conducting general, in-house utilization review unless such review is for
18 the purpose of approving or denying payment for hospital or medical
19 services in a particular case; or

20 (7) utilization review organizations conducting utilization review
21 only with respect to mental health, chemical dependency, chiropractic,
22 optometric, podiatric, dental or any other health care service or services
23 other than the practice of medicine and surgery, until utilization review
24 standards governing such treatment or service are incorporated in rules and
25 regulations adopted pursuant to K.S.A. 40-22a04, and amendments
26 thereto.

27 (b) The provisions of K.S.A. 40-22a04(b)(2), (3), (4), (5); *and* (6) and
28 ~~subsection~~ (c), and amendments thereto, shall not apply to:

29 (1) Utilization review organizations accredited by and adhering to the
30 national utilization review standards approved by ~~the American~~
31 ~~accreditation health care commission~~ *URAC, an independent, nonprofit*
32 *accreditation entity*; or

33 (2) such other utilization review organizations ~~as the advisory~~
34 ~~committee may recommend~~ and the commissioner approves.

35 ~~Sec. 8.~~ 7. K.S.A. 40-4103 is hereby amended to read as follows: 40-
36 4103. Risk retention groups chartered in states other than this state seeking
37 to do business as a risk retention group in this state shall observe and abide
38 by the laws of this state as follows:

39 (a) *Notice of operations and designation of commissioner as agent.*
40 Before offering insurance in this state, a risk retention group shall submit
41 to the commissioner:

42 (1) A statement identifying the state or states in which the risk
43 retention group is chartered and licensed as a liability insurance company,

1 date of chartering, its principal place of business and such other
2 information including information on its membership, as the commissioner
3 of this state may require to verify that the risk retention group is qualified
4 under ~~subsection (k)~~ of K.S.A. 40-4101(k), and amendments thereto;

5 (2) a copy of its plan of operations or a feasibility study and revisions
6 of such plan or study submitted to its state of domicile; ~~but~~, *except that* the
7 provision relating to the submission of a plan of operation or a feasibility
8 study shall not apply with respect to any line or classification of liability
9 insurance ~~which that~~.

10 (A) Was defined in the product liability risk retention act of 1981
11 before October 27, 1986; and

12 (B) was offered before such date by any risk retention group ~~which~~
13 *that* had been chartered and operating for not less than three years before
14 such date;

15 (3) a statement of registration ~~which that~~ designates the
16 commissioner as its agent for the purpose of receiving service of legal
17 documents or process; and

18 (4) a notification fee in the amount of \$250.

19 (b) *Financial condition.* Any risk retention group doing business in
20 this state shall submit to the commissioner:

21 (1) A copy of the group's financial statement submitted to its state of
22 domicile, ~~which shall be certified by an independent public accountant and~~
23 ~~contain~~ *that contains* a statement of opinion on loss and loss adjustment
24 expense reserves made by a member of the American academy of actuaries
25 or a qualified loss reserve specialist (under criteria established by the
26 national association of insurance commissioners);

27 (2) a copy of each examination of the risk retention group as certified
28 by the commissioner or public official conducting the examination;

29 (3) upon request by the commissioner, a copy of any audit performed
30 with respect to the risk retention group; and

31 (4) such information as may be required to verify its continuing
32 qualification as a risk retention group under ~~subsection (k)~~ of K.S.A. 40-
33 4101(k), and amendments thereto.

34 (c) *Taxation.* (1) All premiums paid for coverages within this state to
35 risk retention groups chartered outside this state shall be subject to taxation
36 at the same rate and subject to the same interest, fines and penalties for
37 nonpayment as that provided by K.S.A. 40-246c, and amendments thereto.
38 Risk retention groups chartered or licensed in this state shall be taxed in
39 accordance with K.S.A. 40-252, and amendments thereto.

40 (2) To the extent agents or brokers are utilized, they shall report and
41 pay the taxes for the premiums for risks ~~which that~~ they have placed with
42 or on behalf of a risk retention group not chartered in this state.

43 (3) To the extent agents or brokers are not utilized or fail to pay the

1 tax, each risk retention group shall pay the tax for risks insured within the
 2 state. ~~Further,~~ Each risk retention group shall report all premiums paid to it
 3 for risks insured within the state.

4 (d) *Compliance with unfair claims settlement practices law.* Any risk
 5 retention group, its agents and representatives, shall comply with
 6 ~~subsection (9) of~~ K.S.A. 40-2404(9), and amendments thereto.

7 (e) *Deceptive, false or fraudulent practices.* Any risk retention group
 8 shall comply with the laws of this state regarding deceptive, false or
 9 fraudulent acts or practices. ~~However,~~ *except that* if the commissioner
 10 seeks an injunction regarding such conduct, the injunction shall be
 11 obtained from a court of competent jurisdiction.

12 (f) *Examination regarding financial condition.* Any risk retention
 13 group shall submit to an examination in accordance with K.S.A. 40-222
 14 and 40-223, and amendments thereto, by the commissioner to determine
 15 its financial condition if the commissioner of the jurisdiction in which the
 16 group is chartered has not initiated an examination or does not initiate an
 17 examination within 60 days after a request by the commissioner of this
 18 state.

19 (g) *Notice to purchasers.* Any policy issued by a risk retention group
 20 shall contain in 10 point type on the front page and the declaration page,
 21 the following notice:

22 NOTICE

23 This policy is issued by your risk retention group. Your risk retention
 24 group may not be subject to all of the insurance laws and regulations of
 25 your state. State insurance insolvency guaranty funds are not available for
 26 your risk retention group.

27 (h) *Prohibited acts regarding solicitation or sale.* The following acts
 28 by a risk retention group are hereby prohibited:

29 (1) The solicitation or sale of insurance by a risk retention group to
 30 any person who is not eligible for membership in such group; and

31 (2) the solicitation or sale of insurance by, or operation of, a risk
 32 retention group that is in a hazardous financial condition or is financially
 33 impaired.

34 (i) *Prohibition on ownership by an insurance company.* No risk
 35 retention group shall be allowed to do business in this state if an insurance
 36 company is directly or indirectly a retention group all of whose members
 37 are insurance companies.

38 (j) *Prohibited coverage.* No risk retention group may offer insurance
 39 policy coverage prohibited by the laws of this state or declared unlawful
 40 by the supreme court of the state of Kansas.

41 (k) *Delinquency proceedings.* A risk retention group not chartered in
 42 this state and doing business in this state must comply with a lawful order
 43 issued in a voluntary dissolution proceeding or in a delinquency

1 proceeding commenced by a state insurance commissioner if there has
2 been a finding of financial impairment after an examination under
3 subsection (f) ~~of this section~~.

4 Sec. ~~9~~. 8. K.S.A. 2020 Supp. 44-1704 is hereby amended to read as
5 follows: 44-1704. (a) A person engaged in the business of providing
6 professional employer services pursuant to co-employment relationships in
7 which all or a majority of the employees of a client are covered employees
8 shall be registered pursuant to this section.

9 (b) A person who is not registered pursuant to this section shall not
10 offer or provide professional employer services in this state, and shall not
11 use the names PEO, professional employer organization, staff leasing
12 company, employee leasing company, administrative employer or any
13 other name or title representing professional employer services.

14 (c) Each applicant for registration shall submit an application to the
15 commissioner in such form and manner as prescribed by the
16 commissioner. The application shall contain the following information:

17 (1) The name or names under which the professional employer
18 organization conducts business;

19 (2) the address of the principal place of business of the professional
20 employer organization, and the address of each office the professional
21 employer organization maintains in this state;

22 (3) the professional employer organization's taxpayer or employer
23 identification number;

24 (4) a list, by jurisdiction, of each name under which the professional
25 employer organization has operated in the preceding five years, including
26 any alternative names, names of predecessors and, if known, successor
27 business entities;

28 (5) a statement of ownership, ~~which~~ *that* shall include the name and
29 evidence of the business experience of any person that, individually, or
30 acting in concert with one or more other persons, owns or controls,
31 directly or indirectly, 15% or more of the equity interest of the professional
32 employer organization;

33 (6) a statement of management, ~~which~~ *that* shall include the name and
34 evidence of the business experience of any individual who serves as
35 president, chief executive officer or otherwise has the authority to act as
36 senior executive officer of the professional employer organization; and

37 (7) a financial statement setting forth the financial condition of the
38 professional employer organization or professional employer group, ~~which~~
39 *that* shall comply with the provisions of subsection (h).

40 (d) (1) Each professional employer organization operating within this
41 state as of the effective date of this act shall complete its initial registration
42 not later than 60 days after the effective date of this act. Such initial
43 registration shall be valid until 60 days from the end of the professional

1 employer organization's first fiscal year that is more than one year after the
2 effective date of this act.

3 (2) Each professional employer organization not operating within this
4 state as of the effective date of this act shall complete its initial registration
5 prior to initiating operations within this state. If a professional employer
6 organization not registered in this state becomes aware that an existing
7 client, not based in this state, has employees and operations in this state,
8 the professional employer organization shall either decline to provide
9 professional employer services for those employees, or notify the
10 commissioner within five business days of the professional employer
11 organization's knowledge of this fact and file a limited registration
12 application pursuant to subsection (g), or a full registration if there are
13 more than 50 covered employees employed by such client. The
14 commissioner may issue an interim operating permit for the period of time
15 the application is pending if the professional employer organization is
16 currently registered or licensed by another state; and the commissioner
17 determines it is in the best interests of the potential covered employees.

18 (e) *A registrant's application shall automatically expire 120 days*
19 *after the end of the registrant's fiscal year.* Within ~~60~~ 120 days after the
20 end of a registrant's fiscal year, such registrant shall renew its registration
21 by notifying the commissioner of any changes in the information provided
22 in such registrant's most recent registration or renewal. A registrant's
23 existing registration shall remain in effect for the period of time the
24 renewal application is pending.

25 (f) Professional employer organizations in a professional employer
26 group may satisfy any reporting and financial requirements of this section
27 on a combined or consolidated basis, provided that each member of the
28 professional employer group guarantees the financial capacity obligations
29 required by K.S.A. 2020 Supp. 44-1706, and amendments thereto, of each
30 other member of the professional employer group. In the case of a
31 professional employer group that submits a combined or consolidated
32 audited financial statement, including entities that are not professional
33 employer organizations or that are not in the professional employer group,
34 the controlling entity of the professional employer group under the
35 consolidated or combined statement must guarantee the obligations of the
36 professional employer organizations in the professional employer group.

37 (g) (1) A professional employer organization is eligible for a limited
38 registration if such professional employer organization:

39 (A) Submits a written request for limited registration in such form
40 and manner as prescribed by the commissioner;

41 (B) is domiciled outside this state; and is licensed or registered as a
42 professional employer organization in another state;

43 (C) does not maintain an office in this state; or directly solicit clients

1 located or domiciled within this state; and

2 (D) does not have more than 50 covered employees employed or
3 domiciled in this state on any given day.

4 (2) A limited registration is valid for one year; and may be renewed
5 *thereafter*.

6 (3) A professional employer organization requesting limited
7 registration under this subsection shall provide the commissioner with
8 such information and documentation as required by the commissioner to
9 show that the professional employer organization qualifies for a limited
10 registration.

11 (4) The provisions of K.S.A. 2020 Supp. 44-1706, and amendments
12 thereto, shall not apply to applicants for limited registration.

13 (h) At the time of initial registration, the applicant shall submit the
14 most recent audit of the applicant or such applicant's parent holding
15 company, ~~which~~. *The most recent* audit shall not be older than 13 months.
16 Thereafter, a professional employer organization or professional employer
17 group shall file on an annual basis, within ~~60~~ 120 days after the end of the
18 professional employer organization's or parent holding company's fiscal
19 year, a succeeding audit *and renewal registration application*. An applicant
20 may apply to the commissioner for an extension of time to submit such
21 audit, but any such request shall be accompanied by a letter from the
22 auditor stating the reasons for the delay and the anticipated audit
23 completion date. For the initial application, if the closing date of the
24 audited financial statements required by this section is older than three
25 months from the date of the application, the application also shall include
26 updated, ~~though~~ unaudited; financial statements for the most recent
27 quarter. The financial statement shall be prepared in accordance with
28 generally accepted accounting principles and audited by an independent
29 certified public accountant licensed to practice in the jurisdiction in which
30 such accountant is located; and shall be without qualification as to the
31 going concern status of the professional employer organization. A
32 professional employer group may submit combined or consolidated
33 audited financial statements to meet the requirements of this section. A
34 professional employer organization that has not had sufficient operating
35 history to have audited financial statements based upon at least 12 months
36 of operating history shall meet the financial capacity requirements of
37 subsection (f) and present financial statements reviewed by a certified
38 public accountant.

39 (i) The department shall maintain a list of professional employer
40 organizations registered under this section, and such list shall be readily
41 available to the public by electronic or other means.

42 (j) The commissioner, to the extent ~~practical~~ *feasible*, shall permit the
43 acceptance of electronic filings, including applications, documents, reports

1 and other filings required by the commissioner under this section. The
2 commissioner may provide for the acceptance of electronic filings and
3 other assurance documents by an independent and qualified entity
4 approved by the commissioner that provides satisfactory assurance of
5 compliance acceptable to the commissioner consistent with, or in lieu of,
6 the requirements of this section and K.S.A. 2020 Supp. 44-1706, and
7 amendments thereto. The commissioner shall permit a professional
8 employer organization to authorize such entity approved by the
9 commissioner to act on the professional employer organization's behalf,
10 *including electronic filings of information and payment of registration fees*
11 in complying with the registration requirements of this section, ~~including~~
12 ~~electronic filings of information and payment of registration fees~~. Use of
13 such an approved entity shall be optional and not mandatory for a
14 registrant. Nothing in this subsection shall limit or change the
15 commissioner's authority to register or terminate registration of a
16 professional employer organization, or to investigate or enforce any
17 provision of K.S.A. 2020 Supp. 44-1701 through 44-1711, and
18 amendments thereto.

19 ~~Sec. 9.~~ K.S.A. ~~40-103,~~ 40-22a04, 40-22a06, 40-2405, 40-2501,
20 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-
21 2509, 40-2510, 40-2511, 40-2512, 40-2513 and 40-4103 and K.S.A. 2020
22 Supp. 40-201a, 40-246i, 40-4,104, 40-22a05 and 44-1704 are hereby
23 repealed.

24 ~~Sec. 10.~~ This act shall take effect and be in force from and after
25 its publication in the ~~statute book~~ ***Kansas register***.