

SENATE BILL No. 228

By Committee on Ways and Means

3-14

1 AN ACT concerning insurance; relating to third party administrators;
2 license and renewal application fees; amending K.S.A. 2018 Supp. 40-
3 3812, 40-3813 and 40-3814 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 40-3812 is hereby amended to read as
7 follows: 40-3812. (a) A person shall apply to be an administrator in its
8 home state and shall receive a license from the regulatory authority of its
9 home state prior to performing any function of an administrator in this
10 state.

11 (b) A person applying to Kansas as its home state shall apply for
12 licensure by submitting to the commissioner an application in the form
13 prescribed by the commissioner that shall include or be accompanied by
14 the following information and documents:

15 (1) All basic organizational documents of the applicant, including any
16 articles of incorporation, articles of association, partnership agreement,
17 trade name certificate, trust agreement, shareholder agreement, certificate
18 of existence from the Kansas secretary of state and other applicable
19 documents and all amendments to such documents;

20 (2) the bylaws, rules, regulations or similar documents regulating the
21 internal affairs of the applicant;

22 (3) NAIC biographical affidavits for the individuals who are directly
23 or indirectly responsible for the conduct of affairs of the applicant,
24 including all members of the board of directors, board of trustees,
25 executive committee or other governing board or committee, the principal
26 officers in the case of a corporation or the partners or members in the case
27 of a partnership, association or limited liability company, any shareholders
28 or members holding directly or indirectly 10% or more of the voting stock,
29 voting securities or voting interest of the applicant and any other person
30 who directly or indirectly exercises control or influence over the affairs of
31 the applicant;

32 (4) audited annual financial statements or reports for the two most
33 recent fiscal years that demonstrate that the applicant has a positive net
34 worth. If the applicant has been in existence for less than two fiscal years,
35 the uniform application shall include financial statements or reports,
36 certified by at least two officers, owners or directors of the applicant and

1 prepared in accordance with GAAP, for any completed fiscal years and for
2 any month during the current fiscal year for which such financial
3 statements or reports have been completed. An audited annual financial
4 report prepared on a consolidated basis shall include a columnar
5 consolidating or combining worksheet that shall be filed with the report
6 and include the following:

7 (A) Amounts shown on the consolidated audited financial report
8 shown on the worksheet;

9 (B) amounts for each entity stated separately; and

10 (C) explanations of consolidating and eliminating entries included.

11 The applicant shall also include such other information as the
12 commissioner may require in order to review the current financial
13 condition of the applicant;

14 (5) in lieu of submitting audited financial statements, and upon
15 written application by an applicant and good cause shown, the
16 commissioner may grant a hardship exemption from filing audited
17 financial statements and allow the submission of unaudited financial
18 statements. Acceptable formats for unaudited financial statements, that
19 shall include notes, are:

20 (A) Reports compiled or reviewed by a certified public accountant; or

21 (B) internal financial reports prepared in accordance with GAAP,
22 certified by at least two officers, owners or directors of the administrator.

23 If unaudited financial statements are submitted, the applicant must also
24 secure and maintain a surety bond in a form prescribed by the
25 commissioner for the use and benefit of the commissioner to be held in
26 trust for the benefit and protection of covered persons and any payor or
27 self-funded plan against loss by reason of acts of fraud or dishonesty, for
28 the greater of 10% of funds handled for the benefit of Kansas residents or
29 \$20,000. Administrators of self-funded plans in Kansas are subject to the
30 mandatory surety bond requirement found in subsection (h), regardless of
31 whether they file audited or unaudited financial reports;

32 (6) a statement describing the business plan, including information on
33 staffing levels and activities, proposed in this state and nationwide. The
34 plan shall provide details setting forth the applicant's capability for
35 providing a sufficient number of experienced and qualified personnel in
36 the areas of claims processing, record keeping and underwriting;

37 ~~(7) the a license application fee as provided for by rules and~~
38 ~~regulations in the amount of \$400; and~~

39 (8) such other pertinent information as may be required by the
40 commissioner.

41 (c) An administrator licensed or applying for licensure under the
42 provisions of this section shall make available for inspection by the
43 commissioner, copies of all contracts with payors or other persons utilizing

1 the services of the administrator.

2 (d) An administrator licensed or applying for licensure under the
3 provisions of this section shall produce its accounts, records and files for
4 examination, and makes its officers available to give information with
5 respect to its affairs, as often as reasonably required by the commissioner.

6 (e) The commissioner may refuse to issue a license if the
7 commissioner determines that the applicant or any individual responsible
8 for the conduct of affairs of the applicant is not competent, trustworthy,
9 financially responsible or of good personal and business reputation, or has
10 had an insurance or an administrator certificate of authority or license
11 denied or revoked for cause by any jurisdiction, or if the commissioner
12 determines that any of the grounds set forth in K.S.A. 40-3810, and
13 amendments thereto, exist with respect to the applicant.

14 (f) A license issued under this section shall remain valid, unless
15 surrendered, suspended or revoked by the commissioner, for so long as the
16 administrator continues in business in this state and remains in compliance
17 with the provisions of this act and any applicable rules and regulations.

18 (g) An administrator licensed or applying for licensure under the
19 provisions of this section shall immediately notify the commissioner of
20 any material change in its ownership, control or other fact or circumstance
21 affecting its qualification for a license in this state.

22 (h) An administrator licensed or applying for a home state license that
23 administers or will administer governmental or church self-insured plans
24 in this state or any other state shall maintain a surety bond for the use and
25 benefit of the commissioner to be held in trust for the benefit and
26 protection of covered persons and any payor or self-funded plan against
27 loss by reason of acts of fraud or dishonesty. The bond shall be in the
28 greater of the following amounts:

29 (1) \$100,000; or

30 (2) an amount equal to 10% of the aggregate total amount of self-
31 funded coverage under church plans or governmental plans handled in this
32 state and all additional states in which the administrator is authorized to do
33 business.

34 Sec. 2. K.S.A. 2018 Supp. 40-3813 is hereby amended to read as
35 follows: 40-3813. (a) Unless an administrator has obtained a home state
36 license in this state, any administrator who performs duties as an
37 administrator in this state shall obtain a nonresident administrator license
38 in accordance with the provisions of this section by filing with the
39 commissioner the uniform application, accompanied by a letter of
40 certification. In lieu of requiring an administrator to file a letter of
41 certification with the uniform application, the commissioner may verify
42 the nonresident administrator's home state certificate of authority or
43 license status through an electronic database maintained by the NAIC, its

1 affiliates or subsidiaries.

2 (b) An administrator shall not be eligible for a nonresident
3 administrator license under the provisions of this section if it does not hold
4 a license in a home state that has adopted a substantially similar law
5 governing administrators.

6 (c) Except as provided in subsections (b) and (h) the commissioner
7 shall issue to the administrator a nonresident administrator license
8 promptly upon receipt of a complete application.

9 (d) Each nonresident administrator shall file biennially, as a part of its
10 application for renewal of its license, a statement that its home state
11 administrator license remains in force and has not been revoked or
12 suspended by its home state during the preceding years. *Each nonresident*
13 *administrator renewal application shall be accompanied by a renewal*
14 *application fee in the amount of \$200.*

15 (e) At the time of filing the application for licensing required under
16 the provisions of this section, the nonresident administrator shall pay a
17 license application fee ~~as provided for by rules and regulations~~ *in the*
18 *amount of \$400.*

19 (f) An administrator licensed or applying for licensure under the
20 provisions of this section shall produce its accounts, records and files for
21 examination, and make its officers available to give information with
22 respect to its affairs, as often as reasonably required by the commissioner.

23 (g) A nonresident administrator is not required to hold a nonresident
24 administrator license in this state if the administrator is licensed in its
25 home state and the administrator's duties in this state are limited to:

26 (1) The administration of a group policy or plan and no more than a
27 total of 20% of covered persons, for all plans the administrator services,
28 reside in this state; and

29 (2) the total number of covered persons residing in this state is less
30 than 100.

31 (h) The commissioner may refuse to issue a nonresident administrator
32 license, or delay the issuance of a nonresident administrator license, if the
33 commissioner determines that, due to events or information obtained
34 subsequent to the home state's licensure of the administrator, the
35 nonresident administrator cannot satisfy the requirements of this act or that
36 grounds exist for the home state's revocation or suspension of the
37 administrator's home state certificate of authority or license.

38 Sec. 3. K.S.A. 2018 Supp. 40-3814 is hereby amended to read as
39 follows: 40-3814. (a) Each administrator licensed under the provisions of
40 this act shall file an annual report for the preceding calendar year with the
41 commissioner on or before July 1 of each year, or within such extension of
42 time as the commissioner may grant for good cause, *accompanied by an*
43 *annual report fee in the amount of \$100.* The annual report shall include:

1 (1) An audited financial statement attested to by an independent
2 certified public accountant. An audited annual financial report prepared on
3 a consolidated basis shall include a columnar consolidating or combining
4 worksheet that shall be filed with the report and include the following:

5 (A) Amounts shown on the consolidated audited financial report
6 shown on the worksheet;

7 (B) amounts for each entity stated separately; and

8 (C) explanations of consolidating and eliminating entries included.

9 (2) In lieu of submitting an audited financial statement, and upon
10 written application by an administrator and good cause shown, the
11 commissioner may grant a hardship exemption from filing audited
12 financial statements and allow the submission of unaudited financial
13 statements. Acceptable formats for unaudited financial statements, that
14 shall include notes, are:

15 (A) Reports compiled or reviewed by a certified public accountant; or

16 (B) internal financial reports prepared in accordance with GAAP,
17 certified by at least two officers, owners or directors of the administrator.

18 If unaudited financial statements are submitted, the administrator must
19 secure and maintain a surety bond in a form prescribed by the
20 commissioner for the use and benefit of the commissioner to be held in
21 trust for the benefit and protection of covered persons and any payor or
22 self-funded plan against loss by reason of acts of fraud or dishonesty, for
23 the greater of 10% of funds handled for the benefit of Kansas residents or
24 \$20,000.

25 (b) The annual report shall be in the form and contain such matters as
26 the commissioner prescribes and shall be verified by at least two officers,
27 owners or directors of the administrator.

28 (c) The annual report shall include the complete names and addresses
29 of all payors and for self-funded plans, all employers and trusts, with
30 which the administrator had agreements during the preceding fiscal year.
31 The report shall also include the number of Kansas residents covered by
32 each of the plans.

33 Sec. 4. K.S.A. 2018 Supp. 40-3812, 40-3813 and 40-3814 are hereby
34 repealed.

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