

SENATE BILL No. 78

By Committee on Insurance

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

36 (3) *subpoena witnesses and compel such witnesses to attend and*

1 testify;

2 (4) *compel the production of books, records and other documents;*
3 *and*

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

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

12 (1) *Hold the person in contempt;*

13 (2) *order the person to appear before the commissioner;*

14 (3) *order the person to testify about the matter under investigation or*
15 *in question;*

16 (4) *order the production of records;*

17 (5) *grant injunctive relief, including restricting or prohibiting the*
18 *transaction of the business of insurance;*

19 (6) *impose a civil penalty of not greater than \$2,000 for each*
20 *violation; or*

21 (7) *grant any other necessary or appropriate relief.*

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

28 (b) For the purposes of this section:

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

43 (2) "Service contract" also includes any nonconsumer commercial

1 service contract.

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

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

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

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

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

14 ~~(5)~~(4) "Road hazard" means a hazard that is encountered while
15 driving a motor vehicle, including, but not be limited to, potholes, rocks,
16 wood debris, metal parts, glass, plastic, curbs or composite scraps.

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

23 (2) No service contract that is exempt from regulation as insurance
24 pursuant to chapter 40 of the Kansas Statutes Annotated, and amendments
25 thereto, pursuant to this section shall contain any provision, except as
26 exempt by this section, that would otherwise be covered by a contract of
27 property or liability insurance issued in this state.

28 Sec. 3. K.S.A. 2020 Supp. 40-246i is hereby amended to read as
29 follows: 40-246i. The following definitions shall apply to K.S.A. 40-246b
30 through 40-246e, and amendments thereto, and K.S.A. 2020 Supp. 40-
31 246g, and amendments thereto:

32 (a) "Exempt commercial purchaser" means any person purchasing
33 commercial insurance that, at the time of placement, meets the following
34 requirements:

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

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

40 (3) the person:

41 (A) Possesses a net worth in excess of \$20,040,000, except that this
42 amount shall be adjusted every five years by ~~rules and regulations of~~
43 *publication in the Kansas register* by the commissioner of insurance to

1 account for the percentage change in the consumer price index;

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

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

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

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

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

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

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

23 (2) ~~Affiliated groups~~—If more than one insured from an affiliated
24 group are named insureds on a single non-admitted insurance contract, the
25 term "home state" means the home state, as determined pursuant to
26 paragraph (1), of the member of the affiliated group that has the largest
27 percentage of premium attributed to it under such insurance contract.

28 (c) "Nonadmitted insurer" means an insurer that is not authorized or
29 admitted to transact the business of insurance under the law of the home
30 state, but does not include a risk retention group as that term is defined in
31 15 U.S.C. § 3901(a)(4), as in effect on July 1, 2015.

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

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

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

41 Sec. 4. K.S.A. 2020 Supp. 40-4,104 is hereby amended to read as
42 follows: 40-4,104. The minimum values as specified in K.S.A. 2020 Supp.
43 40-4,105, 40-4,106, 40-4,107, 40-4,108 and 40-4,110, and amendments

1 thereto, of any paid-up annuity, cash surrender or death benefits available
2 under an annuity contract shall be based upon minimum nonforfeiture
3 amounts as defined in this section ~~and amendments thereto.~~

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

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

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

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

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

17 (2) The net considerations for a given contract year used to define the
18 minimum nonforfeiture amount shall be an amount equal to 87.5% of the
19 gross considerations credited to the annuity contract during that contract
20 year.

21 (b) The interest rate used in determining minimum nonforfeiture
22 amounts shall be an annual rate of interest determined as the lesser of three
23 percent per annum and the following, which shall be specified in the
24 annuity contract if the interest rate will be reset:

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

30 (2) reduced by 125 basis points;

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

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

38 (c) During the period or term that an annuity contract provides
39 substantive participation in an equity indexed benefit, such annuity
40 contract may increase the reduction described in ~~paragraph (2) of~~
41 ~~subsection (b) above~~(2) by up to an additional 100 basis points to reflect
42 the value of the equity index benefit. The present value at the issue date of
43 such annuity contract, and at each redetermination date thereafter, of the

1 additional reduction shall not exceed the market value of the benefit. The
2 commissioner may require a demonstration that the present value of the
3 additional reduction does not exceed the market value of the benefit.
4 Lacking such a demonstration that is acceptable to the commissioner, the
5 commissioner may disallow or limit the additional reduction.

6 (d) The commissioner may adopt rules and regulations to implement
7 the provisions of subsection (c) ~~of this section, and amendments thereto,~~
8 and to provide for further adjustments to the calculation of minimum
9 nonforfeiture amounts for annuity contracts that provide substantive
10 participation in an equity index benefit and for such other annuity
11 contracts that the commissioner determines adjustments are justified.

12 Sec. 5. K.S.A. 40-22a04 is hereby amended to read as follows: 40-
13 22a04. (a) The commissioner shall adopt rules and regulations, ~~with the~~
14 ~~advice of the advisory committee created by K.S.A. 40-22a05,~~ establishing
15 standards governing the conduct of utilization review activities performed
16 in this state or affecting residents *or healthcare providers* of this state by
17 utilization review organizations. Unless granted an exemption under
18 K.S.A. 40-22a06, *and amendments thereto*, no utilization review
19 organization may conduct utilization review services in this state or
20 affecting residents of this state ~~on or after May 1, 1995,~~ without first
21 obtaining a certificate from the commissioner.

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

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

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

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

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

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

38 (6) provides such other information or documentation as the
39 commissioner requires.

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

43 (d) The commissioner ~~with the advice of the advisory committee~~ may

1 suspend or revoke the certificate or any exemption from certification
2 requirements upon determination that the interests of Kansas insureds are
3 not being properly served under such certificate or exemption. Any such
4 action shall be taken only after a hearing conducted in accordance with the
5 provisions of the Kansas administrative procedure act.

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

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

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

15 ~~(3) four members who are representatives of utilization review~~
16 ~~organizations; and~~

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

21 ~~(b) Members of the advisory committee shall be appointed for a term~~
22 ~~of three years, except that the first term of office of two members~~
23 ~~representing utilization review organizations and two members~~
24 ~~representing health care providers shall be for a term of two years, and the~~
25 ~~first term for two members representing health care providers and one~~
26 ~~member representing utilization review organizations shall be for a term of~~
27 ~~one year.~~

28 ~~(c) The advisory committee shall be attached to the insurance~~
29 ~~department, and all administrative functions of the advisory committee~~
30 ~~shall be under the direction and supervision of the commissioner. Within~~
31 ~~available appropriations therefor, members of the advisory committee shall~~
32 ~~be paid subsistence allowances, mileage and other expenses as provided in~~
33 ~~subsection (c) of K.S.A. 75-3223, and amendments thereto.~~

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

37 ~~(1) Establish utilization review standards which provide for~~
38 ~~uniformity in the procedures for interaction between utilization review~~
39 ~~organizations and health care providers, payors and consumers of health~~
40 ~~care;~~

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

43 ~~(3) strive to achieve an efficient process for the certification of~~

1 utilization review organizations; and

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

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

5 ~~(+)~~*(a)* Utilization review of health care services provided to patients
 6 under the authority of the Kansas workers compensation act, K.S.A. 44-
 7 501 et seq., and amendments thereto;

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

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

16 Sec. 7. K.S.A. 40-22a06 is hereby amended to read as follows: 40-
 17 22a06. (a) No certificate shall be required for utilization review activities
 18 conducted by or on behalf of:

19 (1) An agency of the federal government;

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

23 (3) a federally qualified health maintenance organization authorized
 24 to transact business in Kansas ~~which~~ *that* is administering a quality
 25 assurance program and performing utilization review activities for its own
 26 members as required by 42 U.S.C. § 300e(c)(8) and 42 U.S.C. § 300e(c)
 27 (6) respectively;

28 (4) a person employed or used by a utilization review organization
 29 authorized to perform utilization review in Kansas, including, but not
 30 limited to, individual nurses and other health care providers. This
 31 exemption shall not apply with respect to individual persons performing
 32 utilization review activities in conjunction with any insurance contract or
 33 health benefit plan pursuant to a direct contractual relationship with a
 34 health maintenance organization, group-funded self-insurance plan or
 35 insurance company;

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

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

43 (7) utilization review organizations conducting utilization review

1 only with respect to mental health, chemical dependency, chiropractic,
 2 optometric, podiatric, dental or any other health care service or services
 3 other than the practice of medicine and surgery, until utilization review
 4 standards governing such treatment or service are incorporated in rules and
 5 regulations adopted pursuant to K.S.A. 40-22a04, and amendments
 6 thereto.

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

9 (1) Utilization review organizations accredited by and adhering to the
 10 national utilization review standards approved by ~~the American~~
 11 ~~accreditation health care commission~~ URAC, *an independent, nonprofit*
 12 *accreditation entity*; or

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

15 Sec. 8. K.S.A. 40-4103 is hereby amended to read as follows: 40-
 16 4103. Risk retention groups chartered in states other than this state seeking
 17 to do business as a risk retention group in this state shall observe and abide
 18 by the laws of this state as follows:

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

22 (1) A statement identifying the state or states in which the risk
 23 retention group is chartered and licensed as a liability insurance company,
 24 date of chartering, its principal place of business and such other
 25 information including information on its membership, as the commissioner
 26 of this state may require to verify that the risk retention group is qualified
 27 under ~~subsection (k)~~ of K.S.A. 40-4101(k), and amendments thereto;

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

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

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

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

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

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

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

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

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

11 (4) such information as may be required to verify its continuing
12 qualification as a risk retention group under ~~subsection (k)~~ of K.S.A. 40-
13 4101(k), and amendments thereto.

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

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

23 (3) To the extent agents or brokers are not utilized or fail to pay the
24 tax, each risk retention group shall pay the tax for risks insured within the
25 state. ~~Further,~~ Each risk retention group shall report all premiums paid to it
26 for risks insured within the state.

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

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

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

42 (g) *Notice to purchasers.* Any policy issued by a risk retention group
43 shall contain in 10 point type on the front page and the declaration page,

1 the following notice:

2 NOTICE

3 This policy is issued by your risk retention group. Your risk retention
4 group may not be subject to all of the insurance laws and regulations of
5 your state. State insurance insolvency guaranty funds are not available for
6 your risk retention group.

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

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

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

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

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

21 (k) *Delinquency proceedings.* A risk retention group not chartered in
22 this state and doing business in this state must comply with a lawful order
23 issued in a voluntary dissolution proceeding or in a delinquency
24 proceeding commenced by a state insurance commissioner if there has
25 been a finding of financial impairment after an examination under
26 subsection (f) of this section.

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

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

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

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

42 (2) the address of the principal place of business of the professional
43 employer organization, and the address of each office the professional

1 employer organization maintains in this state;

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

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

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

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

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

20 (d) (1) Each professional employer organization operating within this
21 state as of the effective date of this act shall complete its initial registration
22 not later than 60 days after the effective date of this act. Such initial
23 registration shall be valid until 60 days from the end of the professional
24 employer organization's first fiscal year that is more than one year after the
25 effective date of this act.

26 (2) Each professional employer organization not operating within this
27 state as of the effective date of this act shall complete its initial registration
28 prior to initiating operations within this state. If a professional employer
29 organization not registered in this state becomes aware that an existing
30 client, not based in this state, has employees and operations in this state,
31 the professional employer organization shall either decline to provide
32 professional employer services for those employees, or notify the
33 commissioner within five business days of the professional employer
34 organization's knowledge of this fact and file a limited registration
35 application pursuant to subsection (g), or a full registration if there are
36 more than 50 covered employees employed by such client. The
37 commissioner may issue an interim operating permit for the period of time
38 the application is pending if the professional employer organization is
39 currently registered or licensed by another state; and the commissioner
40 determines it is in the best interests of the potential covered employees.

41 (e) *A registrant's application shall automatically expire 120 days*
42 *after the end of the registrant's fiscal year.* Within ~~60~~ 120 days after the
43 end of a registrant's fiscal year, such registrant shall renew its registration

1 by notifying the commissioner of any changes in the information provided
2 in such registrant's most recent registration or renewal. A registrant's
3 existing registration shall remain in effect for the period of time the
4 renewal application is pending.

5 (f) Professional employer organizations in a professional employer
6 group may satisfy any reporting and financial requirements of this section
7 on a combined or consolidated basis, provided that each member of the
8 professional employer group guarantees the financial capacity obligations
9 required by K.S.A. 2020 Supp. 44-1706, and amendments thereto, of each
10 other member of the professional employer group. In the case of a
11 professional employer group that submits a combined or consolidated
12 audited financial statement, including entities that are not professional
13 employer organizations or that are not in the professional employer group,
14 the controlling entity of the professional employer group under the
15 consolidated or combined statement must guarantee the obligations of the
16 professional employer organizations in the professional employer group.

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

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

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

23 (C) does not maintain an office in this state; or directly solicit clients
24 located or domiciled within this state; and

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

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

29 (3) A professional employer organization requesting limited
30 registration under this subsection shall provide the commissioner with
31 such information and documentation as required by the commissioner to
32 show that the professional employer organization qualifies for a limited
33 registration.

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

36 (h) At the time of initial registration, the applicant shall submit the
37 most recent audit of the applicant or such applicant's parent holding
38 company, ~~which~~. *The most recent* audit shall not be older than 13 months.
39 Thereafter, a professional employer organization or professional employer
40 group shall file on an annual basis, within ~~60~~ 120 days after the end of the
41 professional employer organization's or parent holding company's fiscal
42 year, a succeeding audit *and renewal registration application*. An applicant
43 may apply to the commissioner for an extension of time to submit such

1 audit, but any such request shall be accompanied by a letter from the
2 auditor stating the reasons for the delay and the anticipated audit
3 completion date. For the initial application, if the closing date of the
4 audited financial statements required by this section is older than three
5 months from the date of the application, the application also shall include
6 updated, ~~though~~ unaudited, financial statements for the most recent
7 quarter. The financial statement shall be prepared in accordance with
8 generally accepted accounting principles and audited by an independent
9 certified public accountant licensed to practice in the jurisdiction in which
10 such accountant is located; and shall be without qualification as to the
11 going concern status of the professional employer organization. A
12 professional employer group may submit combined or consolidated
13 audited financial statements to meet the requirements of this section. A
14 professional employer organization that has not had sufficient operating
15 history to have audited financial statements based upon at least 12 months
16 of operating history shall meet the financial capacity requirements of
17 subsection (f) and present financial statements reviewed by a certified
18 public accountant.

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

22 (j) The commissioner, to the extent ~~practical~~ *feasible*, shall permit the
23 acceptance of electronic filings, including applications, documents, reports
24 and other filings required by the commissioner under this section. The
25 commissioner may provide for the acceptance of electronic filings and
26 other assurance documents by an independent and qualified entity
27 approved by the commissioner that provides satisfactory assurance of
28 compliance acceptable to the commissioner consistent with, or in lieu of,
29 the requirements of this section and K.S.A. 2020 Supp. 44-1706, and
30 amendments thereto. The commissioner shall permit a professional
31 employer organization to authorize such entity approved by the
32 commissioner to act on the professional employer organization's behalf,
33 *including electronic filings of information and payment of registration fees*
34 ~~in complying with the registration requirements of this section, including~~
35 ~~electronic filings of information and payment of registration fees.~~ Use of
36 such an approved entity shall be optional and not mandatory for a
37 registrant. Nothing in this subsection shall limit or change the
38 commissioner's authority to register or terminate registration of a
39 professional employer organization; or to investigate or enforce any
40 provision of K.S.A. 2020 Supp. 44-1701 through 44-1711, and
41 amendments thereto.

42 Sec. 10. K.S.A. 40-103, 40-22a04, 40-22a06, 40-2405, 40-2501, 40-
43 2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-2509,

1 40-2510, 40-2511, 40-2512, 40-2513 and 40-4103 and K.S.A. 2020 Supp.
2 40-201a, 40-246i, 40-4,104, 40-22a05 and 44-1704 are hereby repealed.
3 Sec. 11. This act shall take effect and be in force from and after its
4 publication in the statute book.