

HOUSE BILL No. 2090

AN ACT concerning insurance; relating to fees, assessments and taxes imposed thereon; authorizing the commissioner of insurance to set the amount of certain fees; requiring information obtained from background checks, fingerprinting and criminal history records checks be used solely for the purpose of verifying the identification of an applicant and the fitness of an applicant to be issued a license as an insurance agent; discontinuing annual registration fees for prepaid service plans; modifying the requirement to report individuals who solicit memberships on behalf of such plans from semi-annually to annually and upon application for registration; decreasing the premium tax rate imposed on surplus lines insurance; amending K.S.A. 40-246c, 40-4209, 40-4905, 40-4906 and 40-5505 and repealing the existing sections; also repealing K.S.A. 40-4203.

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

Section 1. K.S.A. 40-246c is hereby amended to read as follows: 40-246c. (a) (1) On March 1 of each year, each licensed agent shall collect and pay to the commissioner a tax of 6% on the total gross premiums charged, less any return premiums, *for the preceding calendar year* for surplus lines insurance transacted by the licensee pursuant to the license for insureds whose home state is this state.

(2) *On March 1 of each year, each licensed agent shall collect and pay to the commissioner a tax of 3% on the total gross premiums charged, less any returned premiums, for the preceding calendar year for surplus lines insurance transacted by the licensee for insureds whose home state is this state. The provisions of this paragraph shall commence with the taxable year beginning January 1, 2024.*

(b) The tax on any portion of the premium unearned at termination of insurance, if any, having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker. The surplus lines licensee is prohibited from rebating any part of the tax for any reason.

(c) The individual responsible for filing the statement shall be the agent who signs the policy or the agent of record with the company. The commissioner of insurance may assess a penalty up to double the amount of tax prescribed in subsection (a) from any licensee or other individual responsible for filing the statement as described in this subsection who fails, refuses or neglects to transmit the required affidavit or statement or fails to pay the tax imposed by this section to the commissioner within the period specified.

Sec. 2. K.S.A. 40-4209 is hereby amended to read as follows: 40-4209. (a) (1) No person shall act as or hold such person out to be a prepaid service plan in this state unless such person holds a certificate of registration as a prepaid service plan issued by the commissioner of insurance. An application for such certificate may be made to the commissioner of insurance ~~on a form~~ *on forms* prescribed by the commissioner ~~and shall be accompanied by~~ *and shall include: (A) The completed application form; (B) a list of each individual who solicits memberships on behalf of such prepaid service plan; and (C) a filing fee of \$100.*

(2) The certificate of registration may be continued for successive annual periods by notifying the commissioner of such intent ~~and~~, paying an annual continuation fee of \$50 *and advising the commissioner of insurance of any additions to or deletions from the list of individuals who solicit memberships on behalf of such prepaid service plan since the last reporting date.*

(b) The certificate of registration shall be issued to or continued for a prepaid service plan by the commissioner of insurance unless the commissioner of insurance, after due notice and hearing, determines that the prepaid service plan is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had a previous application for a certificate of registration denied for cause ~~since the effective date of this act January 1, 1988,~~ or within five years of the date of application, whichever is later.

Sec. 3. K.S.A. 40-4905 is hereby amended to read as follows: 40-4905. (a) Subject to the provisions of K.S.A. 40-4904, and amendments thereto, it shall be unlawful for any person to sell, solicit or negotiate any insurance within this state unless such person has been issued a

license as an insurance agent in accordance with this act.

(b) Any person applying for a resident insurance agent license shall make application on a form prescribed by the commissioner. The applicant shall declare under penalty of perjury that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief. Before approving the application, the commissioner shall determine that the applicant:

- (1) Is at least 18 years of age;
- (2) has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 40-4909, and amendments thereto;
- (3) has paid a nonrefundable fee ~~in the amount of set by the commissioner in an amount not to exceed \$30~~; and
- (4) has successfully passed the examination for each line of authority for which the applicant has applied.

(c) If the applicant is a business entity, then, in addition to the requirements of subsection (a), the commissioner shall also determine the name and address of a licensed agent who shall be responsible for the business entity's compliance with the insurance laws of this state and the rules and regulations promulgated thereunder.

(d) The commissioner may require the applicant to furnish any document or other material reasonably necessary to verify the information contained in an application.

(e) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide a program of instruction that may be approved by the commissioner to each individual employed by or acting on behalf of such insurer to sell, solicit or negotiate limited line credit insurance.

(f) (1) Each person or entity licensed in this state as an insurance agent shall report the following to the commissioner within 30 calendar days of occurrence:

(A) Each disciplinary action on the agent's license or licenses by the insurance regulatory agency of any other state or territory of the United States;

(B) each disciplinary action on an occupational license held by the licensee, other than an insurance agent's license, by the appropriate regulatory authority of this or any other jurisdiction;

(C) each judgment or injunction entered against the licensee on the basis of a violation of any insurance law or conduct involving fraud, deceit or misrepresentation;

(D) all details of any conviction of a misdemeanor or felony other than minor traffic violations. The details shall include the name of the arresting agency, the location and date of the arrest, the nature of the charge or charges, the court in which the case was tried and the disposition rendered by the court;

(E) each change of name. If the change of name is effected by court order, a copy of the court order shall be furnished to the commissioner;

(F) each change in residence or mailing address, email address or telephone number;

(G) each change in the name or address of the agency with which the agent is associated; and

(H) each termination of a business relationship with an insurer if the termination is for cause, including the reason for the termination of the business relationship with such insurer.

(2) Each person or entity licensed in this state as an insurance agent shall provide to the commissioner, upon request, a current listing of company affiliations and affiliated insurance agents.

(3) Each business entity licensed in this state as an insurance agent shall report each change in legal or mailing address, email address and telephone number to the commissioner within 30 days of occurrence.

(4) Each business entity licensed in this state as an insurance agent shall report each change in the name and address of the licensed agent who shall be responsible for the business entity's compliance with the

insurance laws of this state to the commissioner within 30 days of occurrence.

(g) Any applicant whose application for a license is denied shall be given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

(h) (1) The commissioner may require a person applying for a resident insurance agent license to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal arrests and convictions in this state or other jurisdictions. The commissioner is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the commissioner in the taking and processing of fingerprints of applicants and shall release all records of an applicant's arrests and convictions to the commissioner.

(2) The commissioner may conduct, or have a third party conduct, a background check on a person applying for a resident insurance agent license.

(3) Whenever the commissioner requires fingerprinting, a background check, or both, any associated costs shall be paid by the applicant.

(4) The commissioner ~~may~~ shall use the information obtained from a background check, fingerprinting and the applicant's criminal history only for purposes of verifying the identification of any applicant and in the official determination of the fitness of the applicant to be issued a license as an insurance agent in accordance with this act.

(5) A person applying for a resident insurance agent license who has been fingerprinted and has submitted to a state and national criminal history record check within the past 12 months in connection with the successful issuance or renewal of any other state-issued license may submit proof of such good standing to the commissioner in lieu of submitting to the fingerprinting and criminal history record checks described in subsections (h)(1) and (h)(2).

(i) Not later than December 1 of each year, the commissioner shall set and publish in the Kansas register the application fee required pursuant to subsection (b) for the next calendar year.

Sec. 4. K.S.A. 40-4906 is hereby amended to read as follows: 40-4906. (a) Unless denied licensure pursuant to K.S.A. 40-4909, and amendments thereto, a nonresident person shall receive a nonresident agent license if:

(1) Such person is currently licensed as a resident and in good standing in such person's home state;

(2) such person has submitted the proper request for licensure and has paid to the commissioner a nonrefundable application fee ~~of not to exceed~~ \$30 and a biennial fee ~~of not to exceed~~ \$50;

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

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

(b) The commissioner may verify the insurance agent's licensing status through the producer database maintained by the NAIC, its affiliates or subsidiaries.

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

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

resident state.

(3) No fee or license application shall be required for any filing required by this subsection.

(d) Subject to the provisions of subsection (a), any person licensed as a surplus lines agent in such person's home state shall receive a nonresident surplus lines agent license. Except as provided in subsection (a), nothing in this section shall be construed to amend or supersede any provision of K.S.A. 40-246b, and amendments thereto.

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

(f) Not later than December 1 of each year, the commissioner shall set and publish in the Kansas register the application fee required pursuant to subsection (a) for the next calendar year.

Sec. 5. K.S.A. 40-5505 is hereby amended to read as follows: 40-5505. (a) Before issuing a public adjuster license to an applicant under the public adjusters licensing act, the commissioner shall find that the applicant:

(1) Is eligible to designate this state as the applicant's home state or is a nonresident who is not eligible for a license under K.S.A. 40-5508, and amendments thereto;

(2) has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in K.S.A. 40-5510, and amendments thereto;

(3) is trustworthy, reliable and of good reputation, evidence of which may be determined by the commissioner;

(4) is financially responsible to exercise the rights and privileges under the license and has provided proof of financial responsibility as required in K.S.A. 40-5511, and amendments thereto;

(5) has paid an application fee of ~~not to exceed~~ \$100; and

(6) maintains an office in the home state with public access during regular business hours or by reasonable appointment.

(b) In addition to satisfying the requirements of subsection (a), an applicant shall:

(1) Be at least 18 years of age; and

(2) have successfully passed the public adjuster examination.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

(d) (1) The commissioner may require a person applying for a public adjuster license to be fingerprinted and submit to a state and national criminal history record check or to submit to a background check, or both.

(A) The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The commissioner shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the commissioner in the taking and processing of fingerprints of applicants and shall release all records of an applicant's arrests and convictions to the commissioner.

(B) The commissioner may conduct or have a third party conduct a background check on a person applying for a public adjuster license.

(2) Whenever the commissioner requires fingerprinting or a background check, or both, any associated costs shall be paid by the applicant.

(3) The commissioner may use the information obtained from a background check, fingerprinting and the applicant's criminal history only for purposes of verifying the identity of the applicant and in the official determination of the fitness of the applicant to be issued a license as a public adjuster in accordance with the public adjusters licensing act.

(e) Not later than December 1 of each year, the commissioner shall set and publish in the Kansas register the application fees required pursuant to subsection (a) for the next calendar year.

Sec. 6. K.S.A. 40-246c, 40-4203, 40-4209, 40-4905, 40-4906 and 40-5505 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.