

**40-2702. Insurer defined; venue; certificate of authority required; exceptions; acts constituting transaction of business; effect of failure to obtain certificate.** (a) As used in this act, unless the context otherwise requires, the term "insurer" means and includes all corporations, companies, associations, societies, fraternal benefit societies, mutual nonprofit hospital service and nonprofit medical service companies, partnerships and persons engaged as principals in the business of insurance of the kinds enumerated in articles 4, 5, 6, 7, 11, 18, 19, 19a, 19b, 19c, 22, 32 and 38 of chapter 40 of the Kansas Statutes Annotated, and any amendments thereto, insofar as the business of insurance of the kinds enumerated in such articles relate to life and accident or sickness. Whenever in this section there is reference to an act effected or committed by mail, the venue of such act shall be at the point where the matter transmitted by mail is delivered and takes effect.

It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (b) of this section, without a certificate of authority from the commissioner of insurance. This section shall not apply to:

(1) The lawful transaction of insurance procured by agents under the authority of K.S.A. 40-246b, 40-246c and 40-246d, and amendments thereto, relating to accident and sickness insurance;

(2) contracts of reinsurance issued by an insurer not organized under the laws of this state;

(3) transactions in this state involving a policy lawfully solicited, written and delivered outside of this state, covering only subjects of insurance not resident in this state at the time of issuance and which transactions are subsequent to the issuance of such policy;

(4) attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;

(5) transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities, where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business to a group organized for purposes other than the procurement of insurance and where the policyholder is domiciled or otherwise has a bona fide residence;

(6) transactions in this state involving any policy of life or accident and health insurance or annuity contract issued prior to the effective date of this act;

(7) contracts of insurance written by certain lodges, societies, persons and associations specified in K.S.A. 40-202, and amendments thereto, and organizations preempted from state jurisdiction as a result of compliance with both the employees retirement income security act of 1974, as amended, including all bonding provisions, and paragraph (9) of subsection (c) of section 501 of the internal revenue code; and

(8) any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding and strengthening educational institutions, organized and operated without profit to any private shareholder or individual, by issuing insurance and annuity contracts directly from the home office of the company, without insurance agents or insurance representatives in this state, only to or for the benefit of such institutions and individuals engaged in the services of such institutions, but this exemption shall be conditioned upon any such company complying with the following requirements:

(i) Payment of an annual registration fee of \$500;

(ii) filing a copy of the form of any policy or contract issued to Kansas residents with the commissioner of insurance;

(iii) filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the commissioner of insurance; and

(iv) providing, in such form as may be prescribed by the commissioner of insurance, for the appointment of the commissioner of insurance as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kansas citizen and process so served against such company shall have the same force and validity as if served upon the company.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state:

(1) The making of or proposing to make, as an insurer, an insurance contract;

(2) the taking or receiving of any application for insurance;

(3) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

(4) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(5) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications or delivery of policies or contracts or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident in this state. Nothing herein shall be construed to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

(6) the transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or

(7) the transacting of or proposing to transact any insurance business, in substance equivalent to any of the foregoing, in a manner designed to evade the provisions of this act.

(c) (1) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority from the commissioner of insurance shall not impair the validity of any act or contract of such insurer and shall not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such insurer shall have obtained a certificate of authority.

(2) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided, directly or indirectly, in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

**History:** L. 1969, ch. 240, § 2; L. 1985, ch. 164, § 1; July 1.