

40-3613. Same; supervision of insurer by commissioner, grounds for, determination and order of commissioner; appointment of supervisor; conditions imposed upon insurer; service of notice of hearings and orders; civil penalties for violation of supervision order; enforcement of orders by court; personal liability of persons violating orders resulting in loss. (a) Whenever the commissioner has reasonable cause to believe, and has determined after a hearing held under subsection (f), that any domestic insurer has committed or engaged in, or is about to commit or engage in, any act, practice or transaction that would subject it to delinquency proceedings under this act, the commissioner may make and serve upon the insurer and any other persons involved, such orders as are reasonably necessary to correct, eliminate or remedy such conduct, condition or ground. Such orders may be made confidential by the commissioner and may not be subject to release under the Kansas open records act.

(b) If upon examination or at any other time the commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of such domestic insurer's business hazardous to the public or to holders of its policies or certificates of insurance, or if such domestic insurer gives its consent, then the commissioner shall upon such determination:

- (1) Notify the insurer of such determination; and
- (2) furnish to the insurer a written list of the commissioner's requirements to abate the determination.

(c) If the commissioner makes a determination to supervise an insurer subject to an order under subsections (a) or (b), the commissioner shall notify the insurer that such insurer is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (a) and (b) and may also require that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the supervisor:

- (1) Dispose of, convey or encumber any of its assets or its business in force;
- (2) withdraw from any of its bank accounts;
- (3) lend any of its funds;
- (4) invest any of its funds;
- (5) transfer any of its property;
- (6) incur any debt, obligation or liability;
- (7) merge or consolidate with another company; or
- (8) enter into any new reinsurance contract or treaty.

(d) No provision of subsection (c) shall restrict the commissioner's authority to issue an order under K.S.A. 40-222 or 40-222b and amendments thereto.

(e) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. In the event of such insurer's failure to comply with in such time, the commissioner may institute proceedings under K.S.A. 40-3615 or 40-3620 to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(f) The notice of hearing under subsection (a) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the Kansas administrative procedure act.

(g) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(h) Any person who has violated any supervision order issued under this section, which as to such person was still in effect, shall be liable to pay a civil penalty imposed by the district court of Shawnee county not to exceed \$10,000.

(i) The commissioner may apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary and proper to enforce a supervision order.

(j) In the event that any person, subject to the provisions of this act, including those persons described in K.S.A. 40-3610(a), shall knowingly violate any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer shall be reduced or the insurer shall suffer loss it would not otherwise have suffered, such person shall become personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court of Shawnee county to recover the amount of the reduction or loss together with any costs.

History: L. 1991, ch. 125, § 9; July 1.