

HOUSE BILL No. 2508

By Committee on Insurance

1-23

1 AN ACT pertaining to insurance holding companies; amending K.S.A. 40-
2 3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-
3 3310, 40-3311 and 40-3311a and repealing the existing sections.

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

6 New Section 1. (a) With respect to any insurer registered under
7 K.S.A. 40-3305, and amendments thereto, and in accordance with
8 subsection (d), the commissioner of insurance shall have the power to
9 participate in a supervisory college for any domestic insurer that is part of
10 an insurance holding company system with international operations in
11 order to determine compliance by the insurer with this act.

12 (b) The powers of the commissioner of insurance with respect to
13 supervisory colleges include, but are not limited to, the following:

14 (1) Initiating the establishment of a supervisory college;

15 (2) clarifying the membership and participation of other supervisors
16 in the supervisory college;

17 (3) clarifying the functions of the supervisory college and the role of
18 other regulators, including the establishment of a group-wide supervisor;

19 (4) coordinating the ongoing activities of the supervisory college,
20 including planning meetings, supervisory activities and processes for
21 information sharing;

22 (5) establishing a crisis management plan; and

23 (6) establishing a regular assessment to the insurer for the payment of
24 expenses incurred pursuant to subsection (c).

25 (c) Each registered insurer subject to this section shall be liable for
26 and shall pay the expenses, including reasonable expenses for necessary
27 travel, the commissioner of insurance reasonably incurred with respect to
28 the participation in a supervisory college in accordance with subsection
29 (d). A supervisory college may be convened as either a temporary or
30 permanent forum for communication and cooperation between the
31 regulators charged with the supervision of the insurer or its affiliates.

32 (d) In order to assess the business strategy, financial position, legal
33 and regulatory position, risk exposure, risk management and governance
34 processes, and as part of the examination of individual insurers in
35 accordance with K.S.A. 40-3307, and amendments thereto, the
36 commissioner of insurance may participate in a supervisory college with

1 other regulators charged with supervision of the insurer or its affiliates,
2 including other state, federal and international regulatory agencies. The
3 commissioner of insurance may enter into agreements in accordance with
4 K.S.A. 40-3308, and amendments thereto, providing the basis for
5 cooperation between the commissioner of insurance and the other
6 regulatory agencies, and the activities of the supervisory college. Nothing
7 in this section shall delegate to the supervisory college the authority of the
8 commissioner of insurance to regulate or supervise the insurer or its
9 affiliates within the jurisdiction of the supervisory college.

10 New Sec. 2. K.S.A. 40-3301 through 40-3315 inclusive, and sections
11 1 and 2, and amendments thereto, shall be known and may be cited as the
12 insurance holding company act.

13 Sec. 3. K.S.A. 40-3302 is hereby amended to read as follows: 40-
14 3302. As used in this act, unless the context otherwise requires:

15 (a) "Affiliate" of, or person "affiliated" with, a specific person, means
16 a person that directly, or indirectly through one or more intermediaries,
17 controls, ~~or~~ is controlled by, or is under common control with; the person
18 specified.

19 (b) "Commissioner of insurance" means the commissioner of
20 insurance, the commissioner's deputies, or the insurance department, as
21 appropriate.

22 (c) "Control" including the terms "controlling," "controlled by" and
23 "under common control with," means the possession, direct or indirect, of
24 the power to direct or cause the direction of the management ~~and~~ or
25 policies of a person, whether through the ownership of voting securities,
26 by contract other than a commercial contract for goods or nonmanagement
27 services, or otherwise, unless the power is the result of an official position
28 with or corporate office held by the person. Control shall be presumed to
29 exist if any person, directly or indirectly, owns, controls, holds with the
30 power to vote, or holds proxies representing 10% or more of the voting
31 securities of any other person. This presumption may be rebutted by a
32 showing made in the manner provided by subsection (k) of K.S.A. 40-
33 3305, and amendments thereto, that control does not exist in fact. The
34 commissioner of insurance may determine, after a hearing in accordance
35 with the provisions of the Kansas administrative procedure act, that control
36 exists in fact, notwithstanding the absence of a presumption to that effect.

37 (d) *"Enterprise risk" means any activity, circumstance, event or*
38 *series of events involving one or more affiliates of an insurer that, if not*
39 *remedied promptly, is likely to have a material adverse effect upon the*
40 *financial condition or liquidity of the insurer or its insurance holding*
41 *company system as a whole, including, but not limited to, anything that*
42 *would cause the insurer's risk-based capital to fall into company action*
43 *level RBC, as such term is defined in K.S.A. 40-2c01 et seq., and*

1 *amendments thereto, and K.S.A. 40-2d01 et seq., and amendments thereto,*
2 *as appropriate, or would cause the insurer to be in hazardous financial*
3 *condition as set forth in K.S.A. 40-222b, 40-222c and 40-222d, and*
4 *amendments thereto.*

5 (e) "Insurance holding company system" means two or more
6 affiliated persons, one or more of which is an insurer.

7 (e) (f) "Insurer" means any corporation, company, association,
8 society, fraternal benefit society, health maintenance organization,
9 nonprofit medical and hospital service corporation, nonprofit dental
10 service corporation, reciprocal exchange, person or partnership writing
11 contracts of insurance, indemnity or suretyship in this state upon any type
12 of risk or loss except lodges, societies, persons or associations transacting
13 business pursuant to the provisions of K.S.A. 40-202, and amendments
14 thereto.

15 (f) (g) "Person" means an individual, corporation, a partnership, an
16 association, a joint stock company, a trust, an unincorporated organization,
17 any similar entity or any combination of the foregoing acting in concert.

18 (g) (h) "Securityholder" of a specified person means one who owns
19 any security of such person, including common stock, preferred stock, debt
20 obligations, and any other security convertible into or evidencing the right
21 to acquire any of the foregoing.

22 (h) (i) "Subsidiary" of a specified person means an affiliate controlled
23 by such person directly, or indirectly, through one or more intermediaries.

24 (h) (j) "Voting security" means any security convertible into or
25 evidencing a right to acquire a voting security.

26 Sec. 4. K.S.A. 40-3304 is hereby amended to read as follows: 40-
27 3304. (a) (I) No person other than the issuer shall make a tender offer for
28 or a request or invitation for tenders of, or enter into any agreement to
29 exchange securities or, seek to acquire, or acquire, in the open market or
30 otherwise, any voting security of a domestic insurer if, after the
31 consummation thereof, such person would, directly or indirectly (or by
32 conversion or by exercise of any right to acquire) be in control of such
33 insurer, and no person shall enter into an agreement to merge with or
34 otherwise to acquire control of a domestic insurer or any person
35 controlling a domestic insurer unless, at the time any such offer, request, or
36 invitation is made or any such agreement is entered into, or prior to the
37 acquisition of such securities if no offer or agreement is involved, such
38 person has filed with the commissioner of insurance and has sent to such
39 insurer, a statement containing the information required by this section and
40 such offer, request, invitation, agreement or acquisition has been approved
41 by the commissioner of insurance in the manner hereinafter prescribed.
42 The requirements of this section shall not apply to the merger or
43 consolidation of those companies subject to the requirements of K.S.A. 40-

1 507 and 40-1216 to 40-1225, inclusive, and amendments thereto.

2 (2) For the purposes of this section:

3 (A) A domestic insurer shall include any person controlling a
4 domestic insurer unless such person as determined by the commissioner *of*
5 *insurance* is either directly or through its affiliates primarily engaged in
6 business other than the business of insurance. ~~For the purposes of this~~
7 ~~section;~~

8 (B) "Person" shall not include any securities broker holding, in the
9 usual and customary broker's function, less than 20% of the voting
10 securities of ~~an~~ *the* insurance company or of any person which controls ~~an~~
11 *the* insurance company.

12 (b) The statement to be filed with the commissioner of insurance
13 hereunder shall be made under oath or affirmation, shall be accompanied
14 by a nonrefundable filing fee of \$1,000 and shall contain the following
15 information:

16 (1) The name and address of each person by whom or on whose
17 behalf the merger or other acquisition of control referred to in subsection
18 (a) ~~of this section~~ is to be affected, hereinafter called "acquiring party,"
19 and:

20 (A) If such person is an individual, such individual's principal
21 occupation ~~and~~, all offices and positions held *by such individual* during the
22 past five years and any conviction of crimes other than minor traffic
23 violations during the past 10 years;

24 (B) if such person is not an individual, a report of the nature of its
25 business operations during the past five years or for such lesser period as
26 such person and any predecessors thereof shall have been in existence; an
27 informative description of the business intended to be done by such person
28 and such person's subsidiaries; and a list of all individuals who are or who
29 have been selected to become directors or executive officers of such
30 person, or who perform or will perform functions appropriate to such
31 positions. Such list shall include for each such individual the information
32 required by subparagraph (A) ~~of this subsection~~;

33 (2) the source, nature and amount of the consideration used or to be
34 used in effecting the merger or other acquisition of control, a description
35 of any transaction wherein funds were or are to be obtained for any such
36 purpose including any pledge of the insurer's stock, or the stock of any of
37 its subsidiaries or controlling affiliates, and the identity of persons
38 furnishing such consideration, except that where a source of such
39 consideration is a loan made in the lender's ordinary course of business,
40 the identity of the lender shall remain confidential, if the person filing such
41 statement so requests;

42 (3) fully audited financial information as to the earnings and financial
43 condition of each acquiring party for the preceding five fiscal years of

1 each such acquiring party or for such lesser period as such acquiring party
2 and any predecessors thereof shall have been in existence, and similar
3 unaudited information as of a date not earlier than 90 days prior to the
4 filing of the statement;

5 (4) any plans or proposals which each acquiring party may have to
6 liquidate such insurer, to sell its assets ~~or~~, merge or consolidate it with any
7 person or to make any other material change ~~in~~ to its business ~~or~~, corporate
8 structure or management;

9 (5) the number of shares of any security referred to in subsection (a)
10 ~~of this section~~ which each acquiring party proposes to acquire and the
11 terms of the offer, request, invitation, agreement or acquisition referred to
12 in subsection (a) ~~of this section~~, and a statement as to the method by which
13 the fairness of the proposal was arrived at;

14 (6) the amount of each class of any security referred to in subsection
15 (a) ~~of this section~~ which is beneficially owned or concerning which there
16 is a right to acquire beneficial ownership by each acquiring party;

17 (7) a full description of any contracts, arrangements or
18 understandings with respect to any security referred to in subsection (a) ~~of~~
19 ~~this section~~ in which any acquiring party is involved, including but not
20 limited to transfer of any of the securities, joint ventures, loan or option
21 arrangements, puts or calls, guarantees of loans, guarantees against loss or
22 guarantees of profits, division of losses or profits, or the giving or
23 withholding of proxies. Such description shall identify the persons with
24 whom such contracts, arrangements or understandings have been entered
25 into;

26 (8) a description of the purchase of any security referred to in
27 subsection (a) ~~of this section~~ during the ~~12-calendar~~ *12-calendar* months
28 preceding the filing of the statement, by any acquiring party, including the
29 dates of purchase, names of the purchasers, and consideration paid or
30 agreed to be paid therefor;

31 (9) a description of any recommendations to purchase any security
32 referred to in subsection (a) ~~of this section~~ made during the ~~12-calendar~~
33 *12-calendar* months preceding the filing of the statement, by any acquiring
34 party, or by anyone based upon interviews or at the suggestion of such
35 acquiring party;

36 (10) copies of all tender offers for, requests or invitations for tenders
37 of, exchange offers for and agreements to acquire or exchange any
38 securities referred to in subsection (a) ~~of this section~~, and, if distributed, of
39 additional soliciting material relating thereto;

40 (11) the terms of any agreement, contract or understanding made with
41 or proposed to be made with any broker-dealer as to solicitation of
42 securities referred to in subsection (a) ~~of this section~~ for tender, and the
43 amount of any fees, commissions or other compensation to be paid to

1 broker-dealers with regard thereto;

2 (12) *an agreement by the person required to file the statement*
3 *referred to in subsection (a) that it will provide the annual report,*
4 *specified in subsection (l) of K.S.A. 3305, and amendments thereto, for so*
5 *long as control exists;*

6 (13) *an acknowledgment by the person required to file the statement*
7 *referred to in subsection (a) that the person and all subsidiaries within its*
8 *control in the insurance holding company system will provide to the*
9 *commissioner of insurance upon request such information as the*
10 *commissioner of insurance deems necessary to evaluate enterprise risk to*
11 *the insurer; and*

12 (14) such additional information as the commissioner of insurance
13 may by rule or regulation prescribe as necessary or appropriate for the
14 protection of policyholders of the insurer or in the public interest.

15 If the person required to file the statement referred to in subsection (a)
16 ~~of this section~~ is a partnership, limited partnership, syndicate or other
17 group, the commissioner of insurance may require that the information
18 called for by paragraphs (1) through ~~(12)~~ (14) of subsection (b) ~~of this~~
19 ~~section~~ shall be given with respect to each partner of such partnership or
20 limited partnership, each member of such syndicate or group, and each
21 person who controls such partner or member. If any such partner, member
22 or person is a corporation or the person required to file the statement
23 referred to in subsection (a) ~~of this section~~ is a corporation, the
24 commissioner of insurance may require that the information called for by
25 paragraphs (1) through ~~(12)~~ (14) of subsection (b) ~~of this section~~ shall be
26 given with respect to such corporation, each officer and director of such
27 corporation and each person who is directly or indirectly the beneficial
28 owner of more than 10% of the outstanding voting securities of such
29 corporation.

30 If any material change occurs in the facts set forth in the statement filed
31 with the commissioner of insurance and sent to such insurer pursuant to
32 this section, an amendment setting forth such change, together with copies
33 of all documents and other material relevant to such change, shall be filed
34 with the commissioner of insurance and sent to such insurer within two
35 business days after the person learns of such change.

36 (c) If any offer, request, invitation, agreement or acquisition referred
37 to in subsection (a) ~~of this section~~ is proposed to be made by means of a
38 registration statement under the securities act of 1933 or in circumstances
39 requiring the disclosure of similar information under the securities
40 exchange act of 1934, or under a state law requiring similar registration or
41 disclosure, the person required to file the statement referred to in
42 subsection (a) ~~of this section~~ may utilize such documents in furnishing the
43 information called for by that statement.

1 (d) (1) The commissioner of insurance shall approve any merger or
2 other acquisition of control referred to in subsection (a) ~~of this section~~
3 unless, after a public hearing thereon conducted in accordance with the
4 provisions of the Kansas administrative procedure act, the commissioner
5 finds that:

6 (A) After the change of control the domestic insurer referred to in
7 subsection (a) ~~of this section~~ would not be able to satisfy the requirements
8 for the issuance of a license to write the line or lines of insurance for
9 which it is presently licensed;

10 (B) the financial condition of any acquiring party is such as might
11 jeopardize the financial stability of the insurer or prejudice the interest of
12 its policyholders;

13 (C) the plans or proposals which the acquiring party has to liquidate
14 the insurer, sell its assets ~~or~~, consolidate or merge it with any person, or to
15 make any other material change in its business ~~or~~, corporate structure or
16 management, are unfair and unreasonable to policyholders of the insurer
17 ~~and or are~~ not in the public interest; or

18 (D) the competence, experience and integrity of those persons who
19 would control the operation of the insurer are such that it would not be in
20 the interest of policyholders of the insurer ~~and or~~ of the public to permit
21 the merger or other acquisition of control; or

22 (E) the acquisition is likely to be hazardous or prejudicial to the
23 insurance-buying public.

24 (2) The public hearing referred to in paragraph (1) of subsection (d)
25 ~~of this section~~ shall be held as soon as practical after the statement
26 required by this subsection (a) ~~of this section~~ is filed, and at least 20 ~~days'~~
27 ~~days~~ notice thereof shall be given by the commissioner of insurance to the
28 person filing the statement. Not less than seven ~~days'~~
29 ~~days~~ notice of such public hearing shall be given by the person filing the statement to the
30 insurer and to such other persons as may be designated by the
31 commissioner of insurance. At such hearing, the person filing the
32 statement, the insurer, any person to whom notice of hearing was sent, and
33 any other person whose interests may be affected thereby shall have the
34 right to present evidence, examine and cross-examine witnesses, and offer
35 oral and written arguments in accordance with the Kansas administrative
36 procedure act. In the absence of intervention, such insurer or person shall
37 have the right to present oral or written statements in accordance with
38 subsection (c) of K.S.A. 77-523, and amendments thereto.

39 (3) *If the proposed acquisition of control will require the approval of*
40 *more than one commissioner of insurance, the public hearing referred to*
41 *in paragraph (2) may be held on a consolidated basis upon request of the*
42 *person filing the statement referred to in subsection (a). Such person shall*
43 *file the statement referred to in subsection (a) with the national*

1 *association of insurance commissioners within five days of making the*
2 *request for a public hearing. A commissioner of insurance may opt out of*
3 *a consolidated hearing, and shall provide notice to the applicant of the*
4 *opt-out within 10 days of the receipt of the statement referred to in*
5 *subsection (a). A hearing conducted on a consolidated basis shall be*
6 *public and shall be held within the United States before the commissioners*
7 *of insurance of the states in which the insurers are domiciled. Such*
8 *commissioners of insurance shall hear and receive evidence. A*
9 *commissioner of insurance may attend such hearing, in person or by*
10 *telecommunication.*

11 *(4) As a condition of a change of control of a domestic insurer, any*
12 *determination by the commissioner of insurance that the person acquiring*
13 *control of the insurer shall be required to maintain or restore the capital of*
14 *the insurer to the level required by the laws and regulations of this state*
15 *shall be made not later than 60 days after the date of notification of the*
16 *change in control submitted pursuant to subsection (a) of this act.*

17 *(5) The commissioner of insurance may retain at the acquiring*
18 *person's expense any attorneys, actuaries, accountants and other experts*
19 *not otherwise a part of the ~~commissioner's staff as may~~ staff of the*
20 *commissioner of insurance as the commissioner of insurance deems to be*
21 *reasonably necessary to assist the commissioner of insurance in reviewing*
22 *the proposed acquisition of control.*

23 *(e) The provisions of this section shall not apply to: any offer,*
24 *request, invitation, agreement or acquisition which the commissioner of*
25 *insurance by order shall exempt therefrom as:*

26 *(1) Not having been made or entered into for the purpose and not*
27 *having the effect of changing or influencing the control of a domestic*
28 *insurer; or*

29 *(2) as otherwise not comprehended within the purposes of this*
30 *section.*

31 *(f) The following shall be violations of this section:*

32 *(1) The failure to file any statement, amendment or other material*
33 *required to be filed pursuant to subsection (a) or (b) ~~of this section~~; or*

34 *(2) the effectuation or any attempt to effectuate an acquisition of*
35 *control of, or merger with, a domestic insurer unless the commissioner of*
36 *insurance has given the ~~commissioner's~~ requisite approval thereto.*

37 *(g) The courts of this state are hereby vested with jurisdiction over*
38 *every securityholder of a domestic insurer and every person not resident,*
39 *domiciled or authorized to do business in this state who files a statement*
40 *with the commissioner of insurance under this section and over all actions*
41 *involving such person arising out of violations of this section. Each such*
42 *person shall be deemed to have performed acts equivalent to and*
43 *constituting an appointment by such a person of the commissioner of*

1 insurance to be such person's true and lawful attorney upon whom may be
2 served all lawful process in any action, suit or proceeding arising out of
3 violations of this section. Copies of all such lawful process shall be served
4 on the commissioner of insurance and transmitted by registered or certified
5 mail by the commissioner of insurance to such person at such person's last
6 known address.

7 Sec. 5. K.S.A. 40-3305 is hereby amended to read as follows: 40-
8 3305. (a) Every insurer which is authorized to do business in this state and
9 which is a member of an insurance holding company system shall register
10 with the commissioner of insurance, except a foreign insurer subject to
11 registration requirements and standards adopted by statute or regulation in
12 the jurisdiction of its domicile which are substantially similar to those
13 contained in this section. Any insurer which is subject to registration under
14 this section shall register within 15 days after it becomes subject to
15 registration, and annually thereafter by May 1 of each year unless the
16 commissioner of insurance for good cause shown extends the time for
17 registration, and then within such extended time. The commissioner of
18 insurance may require any authorized insurer which is a member of a *an*
19 *insurance* holding company system and which is not subject to registration
20 under this section to furnish a copy of the registration statement, the
21 summary specified in subsection (c) or other information filed by such
22 insurance company with the insurance regulatory authority of domiciliary
23 jurisdiction.

24 (b) *Pursuant to subsection (a)*, every insurer subject to registration
25 shall file a registration statement on a form provided by the commissioner
26 of insurance, which shall contain current information about:

27 (1) The capital structure, general financial condition, ownership and
28 management of the insurer and any person controlling the insurer;

29 (2) the identity and relationship of every member of the insurance
30 holding company system;

31 (3) the following agreements in force and transactions currently
32 outstanding or which ~~have~~ occurred during the last calendar year between
33 such insurer and its affiliates:

34 (A) loans, other investments, or purchases, sales or exchanges of
35 securities of the affiliates by the insurer or of the insurer by its affiliates;

36 (B) purchases, sales, or exchanges of assets;

37 (C) transactions not in the ordinary course of business;

38 (D) guarantees or undertakings for the benefit of an affiliate which
39 result in an actual contingent exposure of the insurer's assets to liability,
40 other than insurance contracts entered into in the ordinary course of the
41 insurer's business;

42 (E) all management agreements ~~and~~, service contracts and ~~all~~ cost
43 sharing arrangements;

- 1 (F) reinsurance agreements;
- 2 (G) dividends and other distributions to shareholders; and
- 3 (H) consolidated tax allocation agreements.
- 4 (4) Other matters concerning transactions between registered insurers
- 5 and any affiliates as may be included from time to time in any registration
- 6 forms adopted or approved by the commissioner of insurance;
- 7 (5) any pledge of the insurer's stock, including stock of any
- 8 subsidiary or controlling affiliate, for a loan made to any member of the
- 9 insurance holding company system;
- 10 (6) *if requested by the commissioner of insurance, the insurer shall*
- 11 *include financial statements of or within an insurance holding company*
- 12 *system, including all affiliates. Financial statements may include, but are*
- 13 *not limited to, annual audited financial statements filed with the U.S.*
- 14 *Securities and Exchange Commission (SEC) pursuant to the securities act*
- 15 *of 1933, as amended, or the securities exchange act of 1934, as amended.*
- 16 *An insurer required to file financial statements pursuant to this paragraph*
- 17 *may satisfy the request by providing the commissioner of insurance with*
- 18 *the most recently filed parent corporation financial statements that have*
- 19 *been filed with the SEC;*
- 20 (7) *statements that the insurer's board of directors and principal*
- 21 *officers oversee corporate governance and internal controls and that the*
- 22 *insurer's principal officers have approved, implemented and continue to*
- 23 *maintain and monitor corporate governance and internal control*
- 24 *procedures; and*
- 25 (8) *any other information required by the commissioner of insurance by*
- 26 *rules and regulations.*
- 27 (c) All registration statements shall ~~contain~~ *be accompanied by a*
- 28 *summary outlining all items in the current registration statement*
- 29 *representing changes from the prior registration statement.*
- 30 (d) No information need be disclosed on the registration statement
- 31 filed pursuant to subsection (b) if such information is not material for the
- 32 purpose of this section. Unless the commissioner of insurance by rules and
- 33 regulations or order provides otherwise, sales, purchases, exchanges, loans
- 34 or extensions of credit, investments or guarantees, involving .5% or less of
- 35 an insurer's admitted assets as of the December 31 next preceding shall ~~not~~
- 36 ~~be deemed material~~ *immaterial* for purposes of this section.
- 37 (e) Each registered insurer shall keep current the information required
- 38 to be disclosed in such insurer's registration statement by reporting all
- 39 material changes or additions on amendment forms provided by the
- 40 commissioner of insurance within 15 days after the end of the month in
- 41 which it learns of each such change or addition, except each registered
- 42 insurer shall report all dividends and other distributions to shareholders
- 43 within five business days following its declaration. Any such dividend or

1 distribution shall not be paid for at least 10 business days from the
2 commissioner's receipt of the notice of its declaration.

3 (f) Any person within an insurance holding company system subject
4 to registration shall ~~be required to~~ provide complete and accurate
5 information to an insurer, where such information is reasonably necessary
6 to enable the insurer to comply with the provisions of this act.

7 (g) The commissioner of insurance shall terminate the registration of
8 any insurer which demonstrates that such insurer no longer is a member of
9 an insurance holding company system.

10 (h) The commissioner of insurance may require or allow two or more
11 affiliated insurers subject to registration hereunder to file a consolidated
12 registration statement.

13 (i) The commissioner of insurance may allow an insurer which is
14 authorized to do business in this state and which is part of an insurance
15 holding company system to register on behalf of any affiliated insurer
16 which is required to register under subsection (a) and to file all
17 information and material required to be filed under this section.

18 (j) The provisions of this section shall not apply to any information or
19 transaction if and to the extent the commissioner of insurance by *rules and*
20 *regulations* or order shall exempt the same from the provisions of this
21 section.

22 (k) Any person may file with the commissioner of insurance a
23 disclaimer of affiliation with any authorized insurer or such a disclaimer
24 may be filed by such insurer or any member of an insurance holding
25 company system. The disclaimer shall fully disclose all material
26 relationships and bases for affiliation between such person and such
27 insurer as well as the basis for disclaiming such affiliation. After a
28 disclaimer has been filed, the insurer shall be relieved of any duty to
29 register or report under this section which may arise out of the insurer's
30 relationship with such person unless and until the commissioner of
31 insurance disallows such a disclaimer. The commissioner of insurance
32 shall disallow such a disclaimer only after furnishing all parties in interest
33 with notice and opportunity to be heard in accordance with the provisions
34 of the Kansas administrative procedure act.

35 (l) *The ultimate controlling person of every insurer subject to*
36 *registration also shall file an annual enterprise risk report. The report, to*
37 *the best of the ultimate controlling person's knowledge and belief, shall*
38 *identify the material risks within the insurance holding company system*
39 *that could pose enterprise risk to the insurer. The report shall be filed with*
40 *the lead state commissioner of insurance of the insurance holding*
41 *company system as determined by the procedures within the financial*
42 *analysis handbook adopted by the national association of insurance*
43 *commissioners. The first enterprise risk report shall be filed no later than*

1 *May 1, 2014, and annually thereafter by May 1 of each year unless the*
2 *commissioner of insurance for good cause shown extends the time for*
3 *filing.*

4 *(m) The failure of an insurer or the ultimate controlling person of an*
5 *insurer to file a registration statement, any summary of the registration*
6 *statement or enterprise risk filing required by this section within the*
7 *specified time for filing shall be a violation by the insurer or by the*
8 *ultimate controlling person of the insurer, as applicable.*

9 Sec. 6. K.S.A. 40-3306 is hereby amended to read as follows: 40-
10 3306. (a) Material transactions by registered insurers with their affiliates
11 shall be subject to the following standards:

12 (1) The terms shall be fair and reasonable;

13 (2) *agreements for cost-sharing services and management shall*
14 *include such provisions as required by rules and regulations adopted by*
15 *the commissioner of insurance;*

16 (3) the charges or fees for services performed shall be reasonable;

17 ~~(4) expenses incurred and payment received shall be allocated to~~
18 ~~the insurer in conformity with customary insurance accounting practices~~
19 ~~consistently applied with respect to such transactions shall be allocated to~~
20 ~~the insurer in conformity with the requirements of K.S.A. 40-225, and~~
21 ~~amendments thereto;~~

22 ~~(4) (5) the books, accounts and records of each party to all such~~
23 ~~transactions shall be so maintained as to clearly and accurately disclose the~~
24 ~~nature and details of the transactions including such accounting~~
25 ~~information necessary to support the reasonableness of the charges or fees~~
26 ~~to the respective parties; and~~

27 ~~(5) (6) the insurer's surplus as regards policyholders following any~~
28 ~~transactions, dividends or distributions to shareholder affiliates shall be~~
29 ~~reasonable in relation to the insurer's outstanding liabilities and adequate~~
30 ~~to its financial needs.~~

31 (b) The following transactions involving a domestic insurer and any
32 person in such insurer's *insurance* holding company system may not be
33 entered into unless the insurer has notified the commissioner in writing of
34 such insurer's intention to enter into such transaction at least 30 days prior
35 thereto, or such shorter period as the commissioner may permit, and the
36 commissioner has not disapproved such transaction within such period.

37 (1) Sales, purchases, exchanges, loans or extensions of credit,
38 guarantees or investments provided such transactions are equal to or
39 exceed:

40 (A) With respect to nonlife insurers, the lesser of 3% of the insurer's
41 admitted assets or 25% of surplus as regards policyholders; or

42 (B) with respect to life insurers, 3% of the insurer's admitted assets,
43 each as of December 31 next preceding.

1 (2) Loans or extensions of credit to any person who is not an affiliate,
2 where the insurer makes such loans or extensions of credit with the
3 agreement or understanding that the proceeds of such transactions, in
4 whole or in substantial part, are to be used to make loans or extensions of
5 credit to, purchase assets of, or make investments in, any affiliate of the
6 insurer making such loans or extensions of credit provided such
7 transactions are equal to or exceed:

8 (A) With respect to nonlife insurers, the lesser of 3% of the insurer's
9 admitted assets or 25% of surplus as regards policyholders; *or*

10 (B) with respect to life insurers, 3% of the insurer's admitted assets,
11 each as of December 31 next preceding.

12 (3) Reinsurance agreements or modifications thereto, *including:*

13 (A) *All reinsurance pooling agreements; and*

14 (B) *agreements in which the reinsurance premium or a change in the*
15 *insurer's liabilities, or the projected reinsurance premium or a projected*
16 *change in the insurer's liabilities in any of the next three consecutive years*
17 *equals or exceeds 5% of the insurer's surplus as regards policyholders, as*
18 *of December 31 next preceding, including those agreements which may*
19 *require as consideration the transfer of assets from an insurer to a*
20 *nonaffiliate, if an agreement or understanding exists between the insurer*
21 *and nonaffiliate that any portion of such assets will be transferred to one or*
22 *more affiliates of the insurer;*

23 (4) *all management agreements, service contracts, tax allocation*
24 *agreements and all cost-sharing arrangements; and*

25 (5) *any material transactions, specified by regulation rules and*
26 *regulations, which the commissioner of insurance determines may*
27 *adversely affect the interests of the an insurer's policyholders.*

28 Nothing herein contained shall be deemed to authorize or permit any
29 transactions which, in the case of an insurer not a member of the same
30 *insurance* holding company system, would be otherwise contrary to law.

31 (c) A domestic insurer may not enter into transactions which are part
32 of a plan or series of like transactions with persons within the *insurance*
33 holding company system if the purpose of those separate transactions is to
34 avoid the ~~statutory~~ *threshold amount required under this section* and thus
35 avoid the review that would occur otherwise. If the commissioner of
36 *insurance* determines that such separate transactions were entered into
37 over any ~~12-month~~ *12-month* period for such purpose, the commissioner of
38 *insurance* may exercise authority under K.S.A. 40-3311, and amendments
39 thereto.

40 (d) The commissioner of *insurance*, in reviewing transactions
41 pursuant to subsection (b), shall consider whether the transactions comply
42 with the standards set forth in subsection (a), and whether they may
43 adversely affect the interests of policyholders.

1 (e) The commissioner of insurance shall be notified within 30 days of
2 any investment of the domestic insurer in any one corporation if the total
3 investment in such corporation by the insurance holding company system
4 exceeds 10% of such corporation's voting securities.

5 (f) *A transaction subject to approval by the commissioner of*
6 *insurance pursuant to K.S.A. 40-3304, and amendments thereto, shall not*
7 *be subject to the requirements of this section.*

8 ~~(g)~~ (g) (1) No insurer subject to registration under K.S.A. 40-3305,
9 and amendments thereto, shall may pay any extraordinary dividend or
10 make any other extraordinary distribution to such insurer's shareholders
11 until:

12 (A) Thirty days after the commissioner of insurance has received
13 notice of the declaration thereof and has not within such period
14 disapproved such payment; or

15 (B) the commissioner of insurance ~~shall have~~ has approved such
16 payment within such 30-day period.

17 (2) (A) For purposes of this section, an extraordinary dividend or
18 distribution includes any dividend or distribution of cash or other property,
19 ~~whose fair market value~~ the fair market value of which, together with that
20 of other dividends or distributions made within the preceding 12 months
21 exceeds the greater of: (A)

22 (i) Ten percent of such insurer's surplus as regards policyholders as of
23 December 31 ~~next~~ immediately preceding; or (B)

24 (ii) the net gain from operations of such insurer, if such insurer is a
25 life insurer, or the net income, if such insurer is not a life insurer, not
26 including realized capital gains for the 12-month period ending December
27 31 ~~next~~ immediately preceding, but shall not include pro rata distributions
28 of any class of the insurer's own securities.

29 (B) *In determining whether a dividend or distribution is*
30 *extraordinary, an insurer, other than a life insurer, may carry forward net*
31 *income from the previous two calendar years that has not already been*
32 *paid out as dividends. This carry-forward shall be computed by taking the*
33 *net income from the second and third preceding calendar years, not*
34 *including realized capital gains, less dividends paid in the second and*
35 *immediately preceding calendar years.*

36 (C) An extraordinary dividend or distribution shall also include any
37 dividend or distribution made or paid out of any funds other than earned
38 surplus arising from the insurer's business, as defined in K.S.A. 40-233,
39 and amendments thereto. The provisions of K.S.A. 40-233, and
40 amendments thereto, shall not be construed so as to prohibit an insurer,
41 subject to registration under K.S.A. 40-3305, and amendments thereto,
42 from making or paying an extraordinary dividend or distribution in
43 accordance with this section.

1 (3) Notwithstanding any other provisions of law, an insurer may
2 declare an extraordinary dividend or distribution which is conditional upon
3 the ~~commissioner's approval thereof, and such a declaration shall confer no~~
4 *approval of the commissioner of insurance . No declaration shall confer*
5 *any* rights upon shareholders until:

6 (A) The commissioner of insurance has approved the payment of
7 such dividend or distribution; or

8 (B) the commissioner of insurance has not disapproved such payment
9 within the 30-day period referred to above.

10 ~~(g)~~ (h) (1) Notwithstanding the control of a domestic insurer by any
11 person, the officers and directors of the insurer shall not thereby be
12 relieved of any obligation or liability to which they would otherwise be
13 subject by law, and the insurer shall be managed so as to assure its separate
14 operating identity consistent with this act.

15 (2) Nothing herein shall preclude a domestic insurer from having or
16 sharing a common management or cooperative or joint use of personnel,
17 property or services with one or more other persons under arrangements
18 meeting the standards of K.S.A. 40-3306, and amendments thereto.

19 ~~(h)~~ (i) For purposes of this act, in determining whether an insurer's
20 surplus as regards policyholders is reasonable in relation to the insurer's
21 outstanding liabilities and adequate to such insurer's financial needs, the
22 following factors, among others, shall be considered:

23 (1) The size of the insurer as measured by such insurer's assets,
24 capital and surplus, reserves, premium writings, insurance in force and
25 other appropriate criteria;

26 (2) the extent to which the insurer's business is diversified among the
27 several lines of insurance;

28 (3) the number and size of risks insured in each line of business;

29 (4) the extent of the geographical dispersion of the insurer's insured
30 risks;

31 (5) the nature and extent of the insurer's reinsurance program;

32 (6) the quality, diversification, and liquidity of the insurer's
33 investment portfolio;

34 (7) the recent past and projected future trend in the size *and*
35 *performance* of the insurer's surplus as regards policyholders;

36 (8) the surplus as regards policyholders maintained by other
37 comparable insurers;

38 (9) the adequacy of the insurer's reserves;

39 (10) the quality and liquidity of investments in affiliates. The
40 commissioner of insurance may treat any such investment as a disallowed
41 asset for purposes of determining the adequacy of surplus as regards
42 policyholders whenever in the commissioner's judgment such investment
43 so warrants; and

1 (11) the quality of the insurer's earnings and the extent to which the
2 reported earnings include extraordinary items.

3 Sec. 7. K.S.A. 40-3307 is hereby amended to read as follows: 40-
4 3307. (a) Subject to the limitation contained in this section and in addition
5 to the powers which the commissioner of insurance has under K.S.A. 40-
6 222 and K.S.A. 40-222a, *and amendments thereto*, relating to the
7 examination of insurers, the commissioner of insurance shall also have the
8 power to ~~order any insurer registered under K.S.A. 40-3305 to produce~~
9 ~~such records, books, or other information papers in the possession of the~~
10 ~~insurer or its affiliates as shall be necessary to ascertain the financial~~
11 ~~condition or legality of conduct of such insurer. In the event such insurer~~
12 ~~fails to comply with such order, the commissioner of insurance shall have~~
13 ~~the power to examine such affiliates to obtain such information~~ *examine*
14 *any insurer registered under K.S.A. 40-3305, and amendments thereto,*
15 *and such insurer's affiliates to ascertain the financial condition, including*
16 *enterprise risk, of such insurer.*

17 (b) (1) The commissioner of insurance ~~shall exercise his power under~~
18 ~~subsection (A) of this section only if the examination of the insurer under~~
19 ~~K.S.A. 40-222 or K.S.A. 40-222a is inadequate or the interests of the~~
20 ~~policyholders of such insurer may be adversely affected~~ *may order any*
21 *insurer registered under K.S.A. 40-3305, and amendments thereto, to*
22 *produce such records, books or other information in the possession of the*
23 *insurer or its affiliates as are reasonably necessary to determine*
24 *compliance with this act.*

25 (2) *To determine compliance with this act, the commissioner of*
26 *insurance may order any insurer and its affiliates registered under K.S.A.*
27 *40-3305, and amendments thereto, to produce information not in the*
28 *possession of the insurer and its affiliates, if the insurer and its affiliates*
29 *can obtain access to such information pursuant to contractual*
30 *relationships, statutory obligations or another method. In the event the*
31 *insurer and its affiliates cannot obtain the information requested by the*
32 *commissioner of insurance, the insurer and its affiliates shall provide the*
33 *commissioner of insurance a detailed explanation of the reason that the*
34 *insurer and its affiliates cannot obtain the information and the identity of*
35 *the holder of information. Whenever it appears to the commissioner of*
36 *insurance that the detailed explanation is without merit, the commissioner*
37 *of insurance may require, after notice and hearing, the insurer or its*
38 *affiliates to pay a penalty of not more than \$5,000 for each day's delay, or*
39 *may suspend or revoke the license of the insurer or of its affiliates.*

40 (c) The commissioner of insurance may retain at the registered
41 insurer's expense such attorneys, actuaries, accountants and other experts
42 not otherwise a part of the commissioner's staff as ~~shall~~ *the commissioner*
43 *of insurance shall determine to be reasonably necessary to assist in the*

1 conduct of the examination under subsection (a) ~~of this section~~. Any
2 persons so retained shall be under the direction and control of the
3 commissioner of insurance and shall act in a purely advisory capacity.

4 (d) Each registered insurer *and such insurer's affiliates* producing
5 examination records, books and papers pursuant to subsection (a) ~~of this~~
6 ~~section~~ shall be liable for and shall pay the expense of such examination in
7 accordance with K.S.A. 40-223 and K.S.A. 40-253, *and amendments*
8 *thereto*.

9 (e) *The commissioner of insurance shall have the power to issue*
10 *subpoenas, administer oaths and examine under oath any person for*
11 *purposes of determining compliance with this section. Upon the failure or*
12 *refusal of any person to obey a subpoena, the commissioner of insurance*
13 *may petition a court of competent jurisdiction, and upon proper showing,*
14 *the court may enter an order compelling the witness to appear and testify*
15 *or produce documentary evidence. Failure to obey the court order shall be*
16 *punishable as contempt of court. Every person subpoenaed shall be*
17 *obliged to attend as a witness at the place specified in the subpoena, when*
18 *subpoenaed, anywhere within the state. Such person shall be entitled to*
19 *the same fees and mileage, if claimed, as a witness in K.S.A. 28-125, and*
20 *amendments thereto. Fees, mileage and actual expense, if any, necessarily*
21 *incurred in securing the attendance and testimony of witnesses shall be*
22 *itemized, charged against and paid by the company being examined.*

23 Sec. 8. K.S.A. 40-3308 is hereby amended to read as follows: 40-
24 3308. ~~All information, documents and copies thereof obtained by or~~
25 ~~disclosed to the commissioner of insurance or any other person in the~~
26 ~~course of an examination or investigation made pursuant to K.S.A. 40-~~
27 ~~3307 and amendments thereto and all information reported pursuant to~~
28 ~~K.S.A. 40-3305 and amendments thereto, shall be given confidential~~
29 ~~treatment and shall not be subject to subpoena. Such information,~~
30 ~~documents and copies thereto shall not be made public by the~~
31 ~~commissioner of insurance, the national association of insurance~~
32 ~~commissioners or any other person, except to insurance departments of~~
33 ~~other states and as otherwise provided in this section, without the prior~~
34 ~~written consent of the insurer to which it pertains. If the commissioner of~~
35 ~~insurance, after giving the insurer and its affiliates who would be affected~~
36 ~~thereby, notice and opportunity to be heard in accordance with the~~
37 ~~provisions of the Kansas administrative procedure act, determines that the~~
38 ~~interests of policyholders, shareholders or the public will be served by the~~
39 ~~publication thereof, the commissioner may publish all or any part thereof~~
40 ~~in such a manner as the commissioner may deem appropriate.~~

41 (a) *Documents, materials or other information obtained by or*
42 *disclosed to the commissioner of insurance or any other person in the*
43 *course of an examination or investigation made pursuant to K.S.A. 40-*

1 3307, and amendments thereto, and all information reported pursuant to
2 subsections (b)(12) and (13) of K.S.A. 40-3304, 40-3305 and 40-3306, and
3 amendments thereto, shall:

- 4 (1) Be confidential and privileged;
- 5 (2) not be subject to disclosure under the Kansas open records act,
6 K.S.A. 45-215 et seq., and amendments thereto;
- 7 (3) not be subject to subpoena; and
- 8 (4) not be subject to discovery or admissible in evidence in any
9 private civil action.

10 (b) The commissioner of insurance shall not otherwise make the
11 documents, materials or other information public without the prior written
12 consent of the insurer to which it pertains unless the commissioner of
13 insurance, after giving the insurer and its affiliates who would be affected
14 thereby, notice and opportunity to be heard in accordance with the
15 provisions of the Kansas administrative procedure act, determines that the
16 interests of policyholders, shareholders or the public would be served by
17 the publication thereof, in which event the commissioner of insurance may
18 publish all or any part thereof in such a manner as the commissioner of
19 insurance may deem appropriate. In making such determination, the
20 commissioner of insurance also shall take into consideration any potential
21 adverse consequences of the disclosure thereof.

22 (c) Neither the commissioner of insurance nor any person who
23 received documents, materials or other information while acting under the
24 authority of the commissioner of insurance or with whom such documents,
25 materials or other information are shared pursuant to this section shall be
26 permitted or required to testify in any private civil action concerning any
27 confidential documents, materials or information subject to subsection (a).

28 (d) In order to assist in the performance of the commissioner of
29 insurance's duties, the commissioner of insurance:

30 (1) May share documents, materials or other information, including
31 the confidential and privileged documents, materials or information
32 subject to subsection (a), with other state, federal and international
33 regulatory agencies, with the national association of insurance
34 commissioners and its affiliates and subsidiaries, and with state, federal
35 and international law enforcement authorities, including members of any
36 supervisory college described in section 1, and amendments thereto,
37 provided that the recipient agrees in writing to maintain the confidentiality
38 and privileged status of the document, material or other information, and
39 has verified in writing the legal authority to maintain confidentiality;

40 (2) notwithstanding the provisions of paragraph (1) above, the
41 commissioner of insurance may only share confidential and privileged
42 documents, material or information reported pursuant to subsection (1) of
43 K.S.A. 40-3305, and amendments thereto, with the commissioner of

1 insurance of states having statutes or regulations substantially similar to
2 subsections (a) and (b), and who have agreed in writing not to disclose
3 such information;

4 (3) may receive documents, materials or information, including
5 otherwise confidential and privileged documents, materials or information
6 from the national association of insurance commissioners, and its
7 affiliates and subsidiaries, and from regulatory and law enforcement
8 officials of other foreign or domestic jurisdictions, and shall maintain as
9 confidential or privileged any document, material or information received
10 with notice or the understanding that it is confidential or privileged under
11 the laws of the jurisdiction that is the source of the document, material or
12 information. Documents received pursuant to this section shall not be
13 subject to disclosure pursuant to the open records act, K.S.A. 45-215 et
14 seq., and amendments thereto; and

15 (4) shall enter into written agreements with the national association
16 of insurance commissioners governing sharing and use of information
17 provided pursuant to this act consistent with this subsection that shall:

18 (i) Specify procedures and protocols regarding the confidentiality and
19 security of information shared with the national association of insurance
20 commissioners and its affiliates and subsidiaries pursuant to this act,
21 including procedures and protocols for sharing by the national association
22 of insurance commissioners with other state, federal or international
23 regulators;

24 (ii) specify that ownership of information shared with the national
25 association of insurance commissioners and its affiliates and subsidiaries
26 pursuant to this act remains with the commissioner of insurance and the
27 national association of insurance commissioners' use of the information is
28 subject to the direction of the commissioner of insurance;

29 (iii) require prompt notice to be given to an insurer and its affiliates
30 whose confidential information in the possession of the national
31 association of insurance commissioners, pursuant to this act, is subject to
32 a request or subpoena to the national association of insurance
33 commissioners for disclosure or production; and

34 (iv) require the national association of insurance commissioners and
35 its affiliates and subsidiaries to consent to intervention by an insurer in
36 any judicial or administrative action in which the national association of
37 insurance commissioners and its affiliates and subsidiaries may be
38 required to disclose confidential information about the insurer and its
39 affiliates shared with the national association of insurance commissioners
40 and its affiliates and subsidiaries pursuant to this act.

41 (e) The sharing of information by the commissioner of insurance,
42 pursuant to this act, shall not constitute a delegation of regulatory
43 authority or rulemaking, and the commissioner of insurance is solely

1 *responsible for the administration, execution and enforcement of the*
2 *provisions of this act.*

3 *(f) No waiver of any applicable privilege or claim of confidentiality*
4 *in the documents, materials or information shall occur as a result of*
5 *disclosure to the commissioner of insurance under this act or as a result of*
6 *sharing as authorized in subsection (d).*

7 *(g) Documents, materials or other information in the possession or*
8 *control of the national association of insurance commissioners, pursuant*
9 *to this act, shall be confidential by law and privileged, shall not be subject*
10 *to the open records act, K.S.A. 45-215 et seq., and amendments thereto,*
11 *shall not be subject to subpoena, and shall not be subject to discovery or*
12 *admissible in evidence in any private civil action.*

13 *(h) The provisions of this section shall expire on July 1, 2017, unless*
14 *the legislature acts to reenact such provision. The provisions of this*
15 *section shall be reviewed by the legislature prior to July 1, 2017.*

16 Sec. 9. K.S.A. 40-3309 is hereby amended to read as follows: 40-
17 3309. The commissioner of insurance, upon notice and opportunity for all
18 interested persons to be heard, may issue such ~~rules, regulations~~ *rules and*
19 *regulations* and orders as shall be necessary to carry out the provisions of
20 this act. Hearings on orders, as defined in subsection (d) of K.S.A. 77-502,
21 and amendments thereto, shall be conducted in accordance with the
22 provisions of the Kansas administrative procedure act.

23 Sec. 10. K.S.A. 40-3310 is hereby amended to read as follows: 40-
24 3310. (a) Whenever it appears to the commissioner of insurance that any
25 insurer or any director, officer, employee or agent thereof has committed
26 or is about to commit a violation of this act or of any rule, regulation, or
27 order issued by the commissioner of insurance hereunder, the
28 commissioner of insurance may apply to the district court in and for the
29 county in which the principal office of the insurer is located or if such
30 insurer has no such office in this state then to the district court of Shawnee
31 county for an order enjoining such insurer or such director, officer,
32 employee or agent thereof from violating or continuing to violate this act
33 or any such rule, regulation or order, and for such other equitable relief as
34 the nature of the case and the interests of the insurer's policyholders,
35 creditors and shareholders or the public may require.

36 (b) No security which is the subject of any agreement or arrangement
37 regarding acquisition, or which is acquired or to be acquired, in
38 contravention of the provisions of this act ~~or of~~ any rules and regulations
39 or order issued by the commissioner of insurance hereunder may be voted
40 at any shareholders' meeting, or may be counted for quorum purposes, and
41 any action of shareholders requiring the affirmative vote of a percentage of
42 shares may be taken as though such securities were not issued and
43 outstanding. However, no action taken at any such meeting shall be

1 invalidated by the voting of such securities, unless the action would
2 materially affect control of the insurer or unless the courts of this state
3 have so ordered. If an insurer or the commissioner of insurance has reason
4 to believe that any security of the insurer has been or is about to be
5 acquired in contravention of the provisions of this act or of any rule,
6 regulation or order issued by the commissioner of insurance hereunder the
7 insurer or the commissioner of insurance may apply to the district court of
8 Shawnee county or to the district court for the county in which the insurer
9 has its principal place of business to enjoin any offer, request, invitation,
10 agreement or acquisition made in contravention of K.S.A. 40-3304, and
11 amendments thereto, or any rules and regulations, or order issued by the
12 commissioner of insurance thereunder to enjoin the voting of any security
13 so acquired, to void any vote of such security already cast at any meeting
14 of shareholders, and for such other equitable relief as the nature of the case
15 and the interests of the insurer's policyholders, creditors and shareholders
16 or the public may require.

17 (c) In any case where a person has acquired or is proposing to acquire
18 any voting securities in violation of this act or any rule, regulation or order
19 issued by the commissioner of insurance hereunder, the district court of
20 Shawnee county or the district court for the county in which the insurer
21 has its principal place of business may, on such notice as the court deems
22 appropriate, upon the application of the insurer or the commissioner of
23 insurance seize or sequester any voting securities of the insurer owned
24 directly or indirectly by such person, and issue such orders with respect
25 thereto as may be appropriate to effectuate the provisions of this act.
26 Notwithstanding any other provisions of law, for the purposes of this act
27 the situs of the ownership of the securities of domestic insurers shall be
28 deemed to be in this state.

29 Sec. 11. K.S.A. 40-3311 is hereby amended to read as follows: 40-
30 3311. (a) Every director or officer of an insurance holding company
31 system who knowingly violates, participates in, or assents to, or who
32 knowingly shall permit any of the officers or agents of the insurer to
33 engage in transactions or make investments which have not been properly
34 reported or submitted pursuant to subsection (a) of K.S.A. 40-3305, or
35 subsections (c) or (d) of K.S.A. 40-3306, and amendments thereto, or
36 which otherwise violates this act, shall pay, in such directors' or officers'
37 individual capacity, a civil forfeiture of not more than \$5,000 per violation,
38 after notice and hearing before the commissioner *of insurance*. In
39 determining the amount of the civil forfeiture, the commissioner *of*
40 *insurance* shall take into account the appropriateness of the forfeiture with
41 respect to the gravity of the violation, the history of previous violations,
42 and such other matters as justice may require.

43 (b) Whenever it appears to the commissioner *of insurance* that any

1 insurer subject to this act or any director, officer, employee or agent
2 thereof has engaged in any transaction or entered into a contract which is
3 subject to K.S.A. 40-3306, and amendments thereto, and which would not
4 have been approved had such approval been requested, the commissioner
5 *of insurance* may order the insurer to cease and desist immediately any
6 further activity under that transaction or contract. After notice and hearing
7 the commissioner ~~may also~~ *of insurance also may* order the insurer to void
8 any such contracts and restore the status quo if such action is in the best
9 interest of the policyholders, creditors or the public.

10 (c) Whenever it appears to the commissioner *of insurance* that any
11 insurer or any director, officer, employee or agent thereof has committed a
12 willful violation of this act, the commissioner *of insurance* may cause
13 criminal proceedings to be instituted by the district court for the county in
14 which the principal office of the insurer is located or if such insurer has no
15 such office in this state, then by the district court for Shawnee county
16 against such insurer or the responsible director, officer, employee or agent
17 thereof. Any insurer which willfully violates this act may be fined not
18 more than \$50,000. Any individual who willfully violates this act may be
19 fined in individual capacity not more than \$10,000 or, be imprisoned for
20 not more than one to three years, or both.

21 (d) Any officer, director or employee of an insurance holding
22 company system who knew or reasonably should have known they were
23 subscribing to or making or causing to be made any false statements, false
24 reports or false filings with the intent to deceive the commissioner *of*
25 *insurance* in the performance of duties under this act, upon conviction
26 thereof, shall be imprisoned for not more than five to 10 years or fined
27 \$100,000, or both. Any fines imposed shall be paid by the officer, director
28 or employee in such person's individual capacity.

29 Sec. 12. K.S.A. 40-3311a is hereby amended to read as follows: 40-
30 3311a. On and after July 1, 1993, when it appears to the commissioner *of*
31 *insurance* that any person has committed a violation of this act which
32 makes the continued operation of an insurer contrary to the interests of
33 policyholders or the public, the commissioner ~~may~~ *of insurance*, after
34 giving notice and an opportunity to be heard, *may* determine to suspend,
35 revoke or refuse to renew such insurer's license or authority to do business
36 in this state for such period as the commissioner *of insurance* finds is
37 required for the protection of policyholders or the public. Any such
38 determination shall be accompanied by specific findings of fact and
39 conclusions of law.

40 Sec. 13. K.S.A. 40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-
41 3308, 40-3309, 40-3310, 40-3311 and 40-3311a are hereby repealed.

42 Sec. 14. This act shall take effect and be in force from and after its
43 publication in the statute book.