

SENATE BILL No. 78

By Committee on Insurance

1-26

Proposed Amendment to SB 78  
For House Committee on Insurance and Pensions  
Prepared by Eileen Ma, Office of Revisor of Statutes  
March 22, 2021

1 AN ACT concerning insurance; relating to the regulation of the business  
2 thereof; granting the commissioner the power to subpoena witnesses  
3 and order depositions when conducting certain investigations; updating  
4 certain definitions relating to service contracts and surplus lines  
5 insurance; interest rate calculations relating to nonforfeiture law for  
6 individual deferred annuities; application requirements for certification  
7 of utilization review organizations; requirements for out-of-state risk  
8 retention groups to do business in state; applications for registration of  
9 professional employer organizations; repealing the automobile club  
10 services act; amending K.S.A. ~~40-103~~, 40-22a04, 40-22a06 and 40-  
11 4103 and K.S.A. 2020 Supp. 40-201a, 40-246i, 40-4,104, 40-22a05 and  
12 44-1704 and repealing the existing sections; also repealing K.S.A. 40-  
13 2405, 40-2501, 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-  
14 2507, 40-2508, 40-2509, 40-2510, 40-2511, 40-2512 and 40-2513.

15

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

17 Section 1. ~~K.S.A. 40-103 is hereby amended to read as follows: 40-~~  
18 ~~103. (a) The commissioner of insurance shall have the:~~

19 ~~(1) General supervision, control and regulation of corporations,~~  
20 ~~companies, associations, societies, exchanges, partnerships, or persons~~  
21 ~~authorized to transact the business of insurance, indemnity or suretyship in~~  
22 ~~this state; and shall have the~~

23 ~~(2) power to make all reasonable rules and regulations necessary to~~  
24 ~~enforce the laws of this state relating thereto.~~

25 ~~(b) The commissioner shall have the authority to:~~

26 ~~(1) Make investigations and examinations:~~

27 ~~(A) In connection with any application for registration or licensure of~~  
28 ~~any person or entity under the laws of this state or any registration or~~  
29 ~~licensure already granted; or~~

30 ~~(B) whenever it appears to the commissioner, upon the basis of a~~  
31 ~~complaint or information, that reasonable grounds exist for the belief that~~  
32 ~~an investigation or examination is necessary or advisable to provide more~~  
33 ~~complete protection to the public;~~

34 ~~(2) appoint investigators to aid in investigations conducted pursuant~~  
35 ~~to this subsection and K.S.A. 2020 Supp. 40-113, and amendments thereto;~~

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

1 ~~testify;~~  
2 ~~(4) compel the production of books, records and other documents;~~  
3 ~~and~~  
4 ~~(5) order depositions to be taken of any witness residing within or~~  
5 ~~outside the state, in the manner prescribed by law for depositions in civil~~  
6 ~~actions, and make such depositions returnable to the commissioner.~~  
7 ~~(e) If any person does not appear or refuses to testify, file a~~  
8 ~~statement, produce records or otherwise does not obey a subpoena issued~~  
9 ~~by the commissioner, the commissioner may apply to any court of~~  
10 ~~competent jurisdiction to enforce compliance with the subpoena. The court~~  
11 ~~may:~~  
12 ~~(1) Hold the person in contempt;~~  
13 ~~(2) order the person to appear before the commissioner;~~  
14 ~~(3) order the person to testify about the matter under investigation or~~  
15 ~~in question;~~  
16 ~~(4) order the production of records;~~  
17 ~~(5) grant injunctive relief, including restricting or prohibiting the~~  
18 ~~transaction of the business of insurance;~~  
19 ~~(6) impose a civil penalty of not greater than \$2,000 for each~~  
20 ~~violation; or~~  
21 ~~(7) grant any other necessary or appropriate relief.~~  
22 **Sec. 2. Section 1.** K.S.A. 2020 Supp. 40-201a is hereby amended to  
23 read as follows: 40-201a. (a) The marketing, sale, offering for sale,  
24 issuance, making, proposing to make and administration of a service  
25 contract shall not be construed to be the business of insurance and shall be  
26 exempt from regulation as insurance pursuant to chapter 40 of the Kansas  
27 Statutes Annotated, and amendments thereto.  
28 (b) For the purposes of this section:  
29 (1) "Service contract" means a contract or agreement for a separate or  
30 additional consideration, for any specified duration, to service, repair,  
31 replace or maintain all or any part of any structural component, appliance  
32 or utility system of any residential property, consumer good or other  
33 property; or to indemnify for service, repair, replacement or maintenance  
34 for consumer good or other property, due to a defect in materials,  
35 workmanship, normal wear and tear; or as a result of power surges or as a  
36 result of accidental damage from the handling of any consumer good or  
37 other property, with or without additional provision for indemnity  
38 payments, when service repair or replacement is not reasonably,  
39 commercially or economically feasible. A service contract may also  
40 include additional provisions for incidental payment of indemnity under  
41 limited circumstances, including, but not limited to, towing, rental and  
42 emergency road service.  
43 (2) "Service contract" also includes any nonconsumer commercial

1 service contract.

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

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

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

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

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

14 ~~(5)(4)~~ "Service contract" does not include an automobile club  
15 service contract. As used in this paragraph:

16 ~~(A) "Automobile club" means any person who, in consideration of  
17 dues, assessments or periodic payments of money, promises its members  
18 or subscribers to assist such members or subscribers in matters relating  
19 to travel and the operation, use and maintenance of an automobile by  
20 supplying features or services or reimbursement thereof, including, but  
21 not limited to:~~

22 ~~(i) Services such as community traffic safety services, travel and  
23 touring service, theft or reward service, map service, towing service,  
24 emergency road service, bail bond service and legal fee reimbursement  
25 service in the defense of traffic offenses, and such enumerated features  
26 or services, if provided by the automobile club itself, shall be subject to  
27 the insurance laws of this state;~~

28 ~~(ii) the purchase of accidental injury and death benefits insurance  
29 coverage issued, as provided by applicable statutes, by an insurance  
30 company authorized to do business in Kansas; and~~

31 ~~(iii) other features or services not deemed by the commissioner to  
32 constitute the business of insurance.~~

33 ~~(B) "Person" means any person, firm, partnership, corporation or  
34 association that conducts an automobile club service business in this  
35 state.~~

36 ~~(C) An automobile service contract shall contain the following  
37 information:~~

38 ~~(i) The corporate name or other name of the club;~~

39 ~~(ii) the location of its home office and its usual place of business in  
40 the state, if any, listing the street address and city; and~~

41 ~~(iii) provisions clearly specifying:~~

42 ~~(a) A description of the services or benefits to which the member is  
43 entitled;~~

New: strike all after "paragraph" on page 3, line 15 before the period on page 4, line 2.

1       **(b) ~~the territory wherein such services are to be rendered; and~~**  
 2       **(c) ~~the dates when such service will commence and terminate.~~**

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

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

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

17       Sec. ~~3~~ 2. K.S.A. 2020 Supp. 40-246i is hereby amended to read as  
 18 follows: 40-246i. The following definitions shall apply to K.S.A. 40-246b  
 19 through 40-246e, and amendments thereto, and K.S.A. 2020 Supp. 40-  
 20 246g, and amendments thereto:

21       (a) "Exempt commercial purchaser" means any person purchasing  
 22 commercial insurance that, at the time of placement, meets the following  
 23 requirements:

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

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

29       (3) the person:

30       (A) Possesses a net worth in excess of \$20,040,000, except that this  
 31 amount shall be adjusted every five years by ~~rules and regulations of~~  
 32 *publication in the Kansas register* by the commissioner of insurance to  
 33 account for the percentage change in the consumer price index;

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

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

41       (D) is a not-for-profit organization or public entity generating annual  
 42 budgeted expenditures of at least \$33,060,000, except that this amount  
 43 shall be adjusted every five years by ~~rules and regulations of~~ *publication*

"Service contract" does not include an automobile service contract. As used in this paragraph, "Automobile club service contract" means a service **contract** that provides, in consideration of dues, assessments or periodic payments of money, promises to assist in matters relating to travel and the operation, use and maintenance of an automobile in the supply of features or services or reimbursement thereof, which may include:

(A) Such services as community traffic safety services, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service and legal fee reimbursement service in the defense of traffic offenses, none of which enumerated features or services, if provided by the promisor itself, shall be subject to the insurance laws of this state;

(B) the purchase of accidental injury and death benefits insurance coverage issued, as provided by applicable statutes, by an insurance company authorized to do business in Kansas; or

(C) such other features or services not deemed by the commissioner to constitute the business of insurance

1 *in the Kansas register* by the commissioner of insurance to account for the  
2 percentage change in the consumer price index; or

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

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

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

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

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

17 (c) "Nonadmitted insurer" means an insurer that is not authorized or  
18 admitted to transact the business of insurance under the law of the home  
19 state, but does not include a risk retention group as that term is defined in  
20 15 U.S.C. § 3901(a)(4), as in effect on July 1, 2015.

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

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

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

30 ~~Sec. 4-3.~~ K.S.A. 2020 Supp. 40-4,104 is hereby amended to read as  
31 follows: 40-4,104. The minimum values as specified in K.S.A. 2020 Supp.  
32 40-4,105, 40-4,106, 40-4,107, 40-4,108 and 40-4,110, and amendments  
33 thereto, of any paid-up annuity, cash surrender or death benefits available  
34 under an annuity contract shall be based upon minimum nonforfeiture  
35 amounts as defined in this section ~~and amendments thereto.~~

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

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

43 (B) An annual contract charge of \$50, accumulated at rates of interest

1 as indicated in subsection (b).  
2 (C) Any premium tax paid by the company for the contract,  
3 accumulated at rates of interest as indicated in subsection (b).  
4 (D) The amount of any indebtedness to the company on the contract,  
5 including interest due and accrued.  
6 (2) The net considerations for a given contract year used to define the  
7 minimum nonforfeiture amount shall be an amount equal to 87.5% of the  
8 gross considerations credited to the annuity contract during that contract  
9 year.  
10 (b) The interest rate used in determining minimum nonforfeiture  
11 amounts shall be an annual rate of interest determined as the lesser of three  
12 percent per annum and the following, which shall be specified in the  
13 annuity contract if the interest rate will be reset:  
14 (1) The five-year constant maturity treasury rate reported by the  
15 federal reserve as of a date, or average over a period, rounded to the  
16 nearest  $\frac{1}{20}$ <sup>th</sup> of one percent, specified in the contract no longer than 15  
17 months prior to the annuity contract's issue date or redetermination date of  
18 ~~paragraph (4) of subsection (b) of this section and amendments thereto~~ (4);  
19 (2) reduced by 125 basis points;  
20 (3) where the resulting interest rate is not less than ~~one percent~~ 15  
21 *basis points or 0.15%*; and  
22 (4) the interest rate shall apply for an initial period and may be  
23 redetermined for additional periods. The redetermination date, basis and  
24 period, if any, shall be stated in the annuity contract. The basis is the date  
25 or average over a specified period that produces the value of the five-year  
26 constant maturity treasury rate to be used at each redetermination date.  
27 (c) During the period or term that an annuity contract provides  
28 substantive participation in an equity indexed benefit, such annuity  
29 contract may increase the reduction described in ~~paragraph (2) of~~  
30 subsection (b) ~~above~~(2) by up to an additional 100 basis points to reflect  
31 the value of the equity index benefit. The present value at the issue date of  
32 such annuity contract, and at each redetermination date thereafter, of the  
33 additional reduction shall not exceed the market value of the benefit. The  
34 commissioner may require a demonstration that the present value of the  
35 additional reduction does not exceed the market value of the benefit.  
36 Lacking such a demonstration that is acceptable to the commissioner, the  
37 commissioner may disallow or limit the additional reduction.  
38 (d) The commissioner may adopt rules and regulations to implement  
39 the provisions of subsection (c) ~~of this section, and amendments thereto,~~  
40 and to provide for further adjustments to the calculation of minimum  
41 nonforfeiture amounts for annuity contracts that provide substantive  
42 participation in an equity index benefit and for such other annuity  
43 contracts that the commissioner determines adjustments are justified.

1       Sec. ~~5~~. **4.** K.S.A. 40-22a04 is hereby amended to read as follows: 40-  
2 22a04. (a) The commissioner shall adopt rules and regulations, ~~with the~~  
3 ~~advice of the advisory committee created by K.S.A. 40-22a05~~, establishing  
4 standards governing the conduct of utilization review activities performed  
5 in this state or affecting residents *or healthcare providers* of this state by  
6 utilization review organizations. Unless granted an exemption under  
7 K.S.A. 40-22a06, *and amendments thereto*, no utilization review  
8 organization may conduct utilization review services in this state or  
9 affecting residents of this state ~~on or after May 1, 1995~~, without first  
10 obtaining a certificate from the commissioner.

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

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

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

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

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

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

27       (6) provides such other information or documentation as the  
28 commissioner requires.

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

32       (d) The commissioner ~~with the advice of the advisory committee~~ may  
33 suspend or revoke the certificate or any exemption from certification  
34 requirements upon determination that the interests of Kansas insureds are  
35 not being properly served under such certificate or exemption. Any such  
36 action shall be taken only after a hearing conducted in accordance with the  
37 provisions of the Kansas administrative procedure act.

38       Sec. ~~6~~. **5.** K.S.A. 2020 Supp. 40-22a05 is hereby amended to read as  
39 follows: 40-22a05. ~~(a) There is hereby created an advisory committee~~  
40 ~~which shall assist the commissioner in the adoption of rules and~~  
41 ~~regulations to implement the provisions of this act. The advisory~~  
42 ~~committee shall consist of 13 persons appointed by the commissioner as~~  
43 ~~follows:~~

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

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

4       ~~(3) four members who are representatives of utilization review~~  
5 ~~organizations; and~~

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

10       ~~(b) Members of the advisory committee shall be appointed for a term~~  
11 ~~of three years, except that the first term of office of two members~~  
12 ~~representing utilization review organizations and two members~~  
13 ~~representing health care providers shall be for a term of two years, and the~~  
14 ~~first term for two members representing health care providers and one~~  
15 ~~member representing utilization review organizations shall be for a term of~~  
16 ~~one year.~~

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

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

26       ~~(1) Establish utilization review standards which provide for~~  
27 ~~uniformity in the procedures for interaction between utilization review~~  
28 ~~organizations and health care providers, payors and consumers of health~~  
29 ~~care;~~

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

32       ~~(3) strive to achieve an efficient process for the certification of~~  
33 ~~utilization review organizations; and~~

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

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

37       ~~(1)(a) Utilization review of health care services provided to patients~~  
38 ~~under the authority of the Kansas workers compensation act, K.S.A. 44-~~  
39 ~~501 et seq., and amendments thereto;~~

40       ~~(2)(b) reviews conducted by any insurance company, health~~  
41 ~~maintenance organization, prepaid service plan, group-funded self-insured~~  
42 ~~plan or similar entity solely for the purpose of determining compliance~~  
43 ~~with the specific terms and conditions of an insurance policy, agreement or~~



1 contract as a part of the normal claim settlement process; or

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

5 Sec. ~~7.~~ **6.** K.S.A. 40-22a06 is hereby amended to read as follows: 40-  
6 22a06. (a) No certificate shall be required for utilization review activities  
7 conducted by or on behalf of:

8 (1) An agency of the federal government;

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

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

17 (4) a person employed or used by a utilization review organization  
18 authorized to perform utilization review in Kansas, including, but not  
19 limited to, individual nurses and other health care providers. This  
20 exemption shall not apply with respect to individual persons performing  
21 utilization review activities in conjunction with any insurance contract or  
22 health benefit plan pursuant to a direct contractual relationship with a  
23 health maintenance organization, group-funded self-insurance plan or  
24 insurance company;

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

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

32 (7) utilization review organizations conducting utilization review  
33 only with respect to mental health, chemical dependency, chiropractic,  
34 optometric, podiatric, dental or any other health care service or services  
35 other than the practice of medicine and surgery, until utilization review  
36 standards governing such treatment or service are incorporated in rules and  
37 regulations adopted pursuant to K.S.A. 40-22a04, and amendments  
38 thereto.

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

41 (1) Utilization review organizations accredited by and adhering to the  
42 national utilization review standards approved by ~~the American~~  
43 ~~accreditation health care commission~~ *URAC, an independent, nonprofit*

- 1 *accreditation entity*; or
- 2 (2) such other utilization review organizations ~~as the advisory~~  
3 ~~committee may recommend and~~ the commissioner approves.
- 4 ~~Sec. 8.~~ 7. K.S.A. 40-4103 is hereby amended to read as follows: 40-  
5 4103. Risk retention groups chartered in states other than this state seeking  
6 to do business as a risk retention group in this state shall observe and abide  
7 by the laws of this state as follows:
- 8 (a) *Notice of operations and designation of commissioner as agent.*  
9 Before offering insurance in this state, a risk retention group shall submit  
10 to the commissioner:
- 11 (1) A statement identifying the state or states in which the risk  
12 retention group is chartered and licensed as a liability insurance company,  
13 date of chartering, its principal place of business and such other  
14 information including information on its membership, as the commissioner  
15 of this state may require to verify that the risk retention group is qualified  
16 under ~~subsection (k)~~ of K.S.A. 40-4101(k), and amendments thereto;
- 17 (2) a copy of its plan of operations or a feasibility study and revisions  
18 of such plan or study submitted to its state of domicile; ~~but~~, *except that* the  
19 provision relating to the submission of a plan of operation or a feasibility  
20 study shall not apply with respect to any line or classification of liability  
21 insurance ~~which that~~:
- 22 (A) Was defined in the product liability risk retention act of 1981  
23 before October 27, 1986; and
- 24 (B) was offered before such date by any risk retention group ~~which~~  
25 *that* had been chartered and operating for not less than three years before  
26 such date;
- 27 (3) a statement of registration ~~which that~~ designates the  
28 commissioner as its agent for the purpose of receiving service of legal  
29 documents or process; and
- 30 (4) a notification fee in the amount of \$250.
- 31 (b) *Financial condition.* Any risk retention group doing business in  
32 this state shall submit to the commissioner:
- 33 (1) A copy of the group's financial statement submitted to its state of  
34 domicile, ~~which shall be certified by an independent public accountant and~~  
35 ~~contain~~ *that contains* a statement of opinion on loss and loss adjustment  
36 expense reserves made by a member of the American academy of actuaries  
37 or a qualified loss reserve specialist (under criteria established by the  
38 national association of insurance commissioners);
- 39 (2) a copy of each examination of the risk retention group as certified  
40 by the commissioner or public official conducting the examination;
- 41 (3) upon request by the commissioner, a copy of any audit performed  
42 with respect to the risk retention group; and
- 43 (4) such information as may be required to verify its continuing

1 qualification as a risk retention group under ~~subsection (k)~~ of K.S.A. 40-  
2 4101(k), and amendments thereto.

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

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

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

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

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

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

31 (g) *Notice to purchasers.* Any policy issued by a risk retention group  
32 shall contain in 10 point type on the front page and the declaration page,  
33 the following notice:

34 NOTICE

35 This policy is issued by your risk retention group. Your risk retention  
36 group may not be subject to all of the insurance laws and regulations of  
37 your state. State insurance insolvency guaranty funds are not available for  
38 your risk retention group.

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

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

43 (2) the solicitation or sale of insurance by, or operation of, a risk

1 retention group that is in a hazardous financial condition or is financially  
2 impaired.

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

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

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

16 ~~Sec. 9.~~ **8.** K.S.A. 2020 Supp. 44-1704 is hereby amended to read as  
17 follows: 44-1704. (a) A person engaged in the business of providing  
18 professional employer services pursuant to co-employment relationships in  
19 which all or a majority of the employees of a client are covered employees  
20 shall be registered pursuant to this section.

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

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

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

31 (2) the address of the principal place of business of the professional  
32 employer organization, and the address of each office the professional  
33 employer organization maintains in this state;

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

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

40 (5) a statement of ownership, ~~which~~ *that* shall include the name and  
41 evidence of the business experience of any person that, individually, or  
42 acting in concert with one or more other persons, owns or controls,  
43 directly or indirectly, 15% or more of the equity interest of the professional

- 1 employer organization;
- 2 (6) a statement of management, ~~which~~ *that* shall include the name and  
3 evidence of the business experience of any individual who serves as  
4 president, chief executive officer or otherwise has the authority to act as  
5 senior executive officer of the professional employer organization; and
- 6 (7) a financial statement setting forth the financial condition of the  
7 professional employer organization or professional employer group, ~~which~~  
8 *that* shall comply with the provisions of subsection (h).
- 9 (d) (1) Each professional employer organization operating within this  
10 state as of the effective date of this act shall complete its initial registration  
11 not later than 60 days after the effective date of this act. Such initial  
12 registration shall be valid until 60 days from the end of the professional  
13 employer organization's first fiscal year that is more than one year after the  
14 effective date of this act.
- 15 (2) Each professional employer organization not operating within this  
16 state as of the effective date of this act shall complete its initial registration  
17 prior to initiating operations within this state. If a professional employer  
18 organization not registered in this state becomes aware that an existing  
19 client, not based in this state, has employees and operations in this state,  
20 the professional employer organization shall either decline to provide  
21 professional employer services for those employees, or notify the  
22 commissioner within five business days of the professional employer  
23 organization's knowledge of this fact and file a limited registration  
24 application pursuant to subsection (g), or a full registration if there are  
25 more than 50 covered employees employed by such client. The  
26 commissioner may issue an interim operating permit for the period of time  
27 the application is pending if the professional employer organization is  
28 currently registered or licensed by another state; and the commissioner  
29 determines it is in the best interests of the potential covered employees.
- 30 (e) *A registrant's application shall automatically expire 120 days*  
31 *after the end of the registrant's fiscal year.* Within ~~60~~ 120 days after the  
32 end of a registrant's fiscal year, such registrant shall renew its registration  
33 by notifying the commissioner of any changes in the information provided  
34 in such registrant's most recent registration or renewal. A registrant's  
35 existing registration shall remain in effect for the period of time the  
36 renewal application is pending.
- 37 (f) Professional employer organizations in a professional employer  
38 group may satisfy any reporting and financial requirements of this section  
39 on a combined or consolidated basis, provided that each member of the  
40 professional employer group guarantees the financial capacity obligations  
41 required by K.S.A. 2020 Supp. 44-1706, and amendments thereto, of each  
42 other member of the professional employer group. In the case of a  
43 professional employer group that submits a combined or consolidated

1 audited financial statement, including entities that are not professional  
2 employer organizations or that are not in the professional employer group,  
3 the controlling entity of the professional employer group under the  
4 consolidated or combined statement must guarantee the obligations of the  
5 professional employer organizations in the professional employer group.

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

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

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

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

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

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

18 (3) A professional employer organization requesting limited  
19 registration under this subsection shall provide the commissioner with  
20 such information and documentation as required by the commissioner to  
21 show that the professional employer organization qualifies for a limited  
22 registration.

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

25 (h) At the time of initial registration, the applicant shall submit the  
26 most recent audit of the applicant or such applicant's parent holding  
27 company, ~~which~~. *The most recent* audit shall not be older than 13 months.  
28 Thereafter, a professional employer organization or professional employer  
29 group shall file on an annual basis, within ~~60~~ 120 days after the end of the  
30 professional employer organization's or parent holding company's fiscal  
31 year, a succeeding audit *and renewal registration application*. An applicant  
32 may apply to the commissioner for an extension of time to submit such  
33 audit, but any such request shall be accompanied by a letter from the  
34 auditor stating the reasons for the delay and the anticipated audit  
35 completion date. For the initial application, if the closing date of the  
36 audited financial statements required by this section is older than three  
37 months from the date of the application, the application also shall include  
38 updated, ~~though~~ ~~though~~ unaudited, financial statements for the most recent  
39 quarter. The financial statement shall be prepared in accordance with  
40 generally accepted accounting principles and audited by an independent  
41 certified public accountant licensed to practice in the jurisdiction in which  
42 such accountant is located; and shall be without qualification as to the  
43 going concern status of the professional employer organization. A

1 professional employer group may submit combined or consolidated  
2 audited financial statements to meet the requirements of this section. A  
3 professional employer organization that has not had sufficient operating  
4 history to have audited financial statements based upon at least 12 months  
5 of operating history shall meet the financial capacity requirements of  
6 subsection (f) and present financial statements reviewed by a certified  
7 public accountant.

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

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

31 ~~Sec. 9.~~ K.S.A. ~~40-103,~~ 40-22a04, 40-22a06, 40-2405, 40-2501,  
32 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-2507, 40-2508, 40-  
33 2509, 40-2510, 40-2511, 40-2512, 40-2513 and 40-4103 and K.S.A. 2020  
34 Supp. 40-201a, 40-246i, 40-4,104, 40-22a05 and 44-1704 are hereby  
35 repealed.

36 ~~Sec. 10.~~ **10.** This act shall take effect and be in force from and after  
37 its publication in the statute book.