

Substitute for SENATE BILL No. 123

AN ACT concerning insurance; relating to the licensure of insurance agents; repealing K.S.A. 40-240, 40-240f, 40-241a, 40-241b, 40-241c, 40-241d, 40-241e, 40-241f, 40-241g, 40-241i, 40-242, 40-245, 40-246, 40-3701, 40-3702, 40-3703, 40-3704, 40-3705, 40-3706, 40-3707, 40-3708, 40-3709, 40-3710, 40-3711, 40-3712, 40-3713 and 40-3714.

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

Section 1. (a) Sections 1 through 18, and amendments thereto, shall constitute and be known as the uniform insurance agents licensing act.

(b) Except as provided in section 6 and subsection (b) of section 14, and amendments thereto, this act shall not apply to any excess and surplus lines agents and brokers licensed pursuant to K.S.A. 40-246b and amendments thereto.

Sec. 2. As used in this act: (a) "Approved subject" or "approved course" means any educational presentation involving insurance fundamentals, insurance law, insurance policies and coverage, insurance needs, insurance risk management, insurance agency management or other areas, which is offered in a class, seminar, computer based training, interactive internet training or other similar form of instruction, and which has been approved by the commissioner under this act as expanding skills and knowledge obtained prior to initial licensure under this act or developing new and relevant skills and knowledge in preparation for such licensure.

(b) "Biennial due date" means the date of birth of any licensed insurance agent who is required to complete C.E.C.'s and report the completion of such C.E.C.'s to the commissioner pursuant to this act, except that such due date shall not be earlier than two years from the date of the insurance agent's initial licensure under this act. The biennial due date for a registered business entity shall be the date of initial licensure under this act.

(c) "Biennium" means the period starting with the insurance agent's biennial due date in 2001 and each two-year period thereafter for any insurance agent who was born in an odd-numbered year. For any insurance agent who was born in an even-numbered year, the term shall mean the period starting with the insurance agent's biennial due date in 2002 and each two-year period thereafter. The biennium for a registered business entity shall be the two-year period following such business entity's initial licensure or renewal of such license.

(d) "Broker" means any individual who acts or aids in any manner in negotiating contracts of insurance, or in placing risks or in soliciting or effecting contracts of insurance as an agent for an insured other than such individual and not as an agent of an insurance company or any other type of insurance carrier. The term "broker" shall not include a person working as an officer for an insurance carrier, or in a clerical, administrative or service capacity for an insurance carrier, licensed agent or broker, provided that such person does not solicit contracts of insurance. The term "broker" shall not include an attorney-at-law in the performance of such attorney's duties, an insured who places or negotiates the placement of such insured's own insurance, or any employee of an insured engaged in placing or negotiating for placement of insurance for such employee's employer.

(e) "Business entity" means any corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(f) "C.E.C." means continuing education credit containing at least 50 minutes of instruction in each clock hour. The term C.E.C. also includes any value, expressed in a whole number of units, assigned by the commissioner to an approved subject.

(g) "Commissioner" means the commissioner of insurance as defined in K.S.A. 40-102 and amendments thereto. The term commissioner shall also include any authorized representative or designee of the commissioner.

(h) "Department" means the insurance department established by K.S.A. 40-102 and amendments thereto.

(i) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance agent maintains such agent's principal place of residence or principal place of business and is licensed to act as an insurance agent.

(j) "Inactive agent" means any licensed agent who presents evidence satisfactory to the commissioner which demonstrates that such agent will not do any act toward transacting the business of insurance for not less

than two but not more than four years from the date such evidence is received by the commissioner.

(k) “Insurance agent” and “agent” means any person required to be licensed under the provisions of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to sell, solicit or negotiate insurance. For the purposes of this act, whenever the terms “agent” or “broker” appear in chapter 40 of the Kansas Statutes Annotated, and amendments thereto, each term shall mean insurance agent unless the context requires otherwise. Insurance agent also includes the terms “insurance producer” or “producer”.

(l) “Insurance” means any of the lines of authority specified in subsection (a) of section 3 and amendments thereto.

(m) “Insurance producer” or “producer” means any person licensed under the laws of another state to sell, solicit, or negotiate insurance. For the purposes of this act, the terms “insurance agent” and “agent” shall include an insurance producer or producer when the context so requires. In the context of a producer database maintained by this state, another state or the NAIC, the term producer shall include agent.

(n) “Insurer” and “insurance company” shall have the meaning ascribed to the term insurance company by K.S.A. 40-222c and amendments thereto.

(o) “License” means a document issued by this state’s insurance commissioner authorizing a person to act as an insurance agent for the lines of authority specified in such document.

(p) “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of limited line credit insurance.

(q) “Limited line credit insurance agent” means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.

(r) “NAIC” means the national association of insurance commissioners.

(s) “Negotiate” means the act of conferring directly with or offering advice directly to any purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of such contract, provided that the person engaged in such act either sells insurance or obtains insurance from insurers for purchasers.

(t) “Person” means an individual or a business entity.

(u) “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(v) “Solicit” shall include any attempt to sell insurance or asking or urging a person to apply for any particular kind of insurance from any particular insurance company.

Sec. 3. (a) Unless denied licensure pursuant to section 9 and amendments thereto, any person who meets the requirements of section 5, and amendments thereto, shall be issued an insurance agent license. An insurance agent may receive qualifications for a license in one or more of the following lines of authority:

(1) Life—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(2) Accident and health or sickness—insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

(3) Property—insurance coverage for the direct or consequential loss or damage to property of every kind.

(4) Casualty—insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

(5) Variable life and variable annuity products—insurance coverage provided under variable life insurance contracts, variable annuities or any

other life insurance or annuity product that reflects the investment experience of a separate account.

(6) Personal lines—property and casualty insurance coverage sold primarily to an individual or family for noncommercial purposes.

(7) Credit—limited line credit insurance.

(8) Any other line of insurance permitted under the provisions of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations promulgated thereunder.

(b) Unless suspended, revoked or refused renewal pursuant to section 9, and amendments thereto, an insurance agent license shall remain in effect as long as education requirements for resident individual agents are met by such insurance agent's biennial due date.

(c) On and after the effective date of this act: (1) Each licensed insurance agent who is an individual and holds a property or casualty qualification, or both, or a personal lines qualification shall biennially obtain a minimum of 12 C.E.C.'s in courses certified as property and casualty which shall include at least one hour of instruction in insurance ethics. No more than three of the required C.E.C.'s shall be in insurance agency management.

(2) Each licensed insurance agent who is an individual and holds a life, accident and health, or variable contracts qualification, or any combination thereof, shall biennially complete 12 C.E.C.'s in courses certified as life, accident and health, or variable contracts which shall include at least one hour of instruction in insurance ethics. No more than three of the required C.E.C.'s shall be in insurance agency management.

(3) Each licensed insurance agent who is an individual and holds a crop only qualification shall biennially obtain a minimum of two C.E.C.'s in courses certified as crop under the property and casualty category.

(4) Each licensed insurance agent who is an individual and is licensed only for title insurance shall biennially obtain a minimum of four C.E.C.'s in courses certified by the board of abstract examiners as title under the property and casualty category.

(5) Each licensed insurance agent who is an individual and holds a life insurance license solely for the purpose of selling life insurance or annuity products used to fund a prearranged funeral program and whose report of compliance required by subsection (g) is accompanied by a certification from an officer of each insurance company represented by such agent certifying that such agent transacted no other insurance business during the period covered by the report shall biennially obtain a minimum of two C.E.C.'s in courses certified as life or variable contracts under the life, accident and health or variable contracts category.

(d) On and after the effective date of this act, each individual insurance agent who holds a license with both a property or casualty qualification, or both, and a life, accident and health or variable contracts qualification, or any combination thereof, and who earn C.E.C.'s from courses certified by the commissioner as qualifying for credit in any class, may apply, at such insurance agent's option, such C.E.C.'s toward either the property or casualty continuing education requirement or to the life, accident and health or variable contracts continuing education requirement. However, no C.E.C. shall be applied to satisfy both the biennial property or casualty requirement, or both, and the biennial requirement for life, accident and health or variable contracts, or any combination thereof.

(e) An instructor of an approved subject shall be entitled to the same C.E.C. as a student completing the study.

(f) (1) An individual insurance agent who has been licensed for more than one year, on or before such insurance agent's biennial due date, shall file a report with the commissioner certifying that such insurance agent has met the continuing education requirements for the previous biennium ending on such insurance agent's biennial due date. Each individual insurance agent shall maintain a record of all courses attended together with a certificate of attendance for the remainder of the biennium in which the courses were attended and the entire next succeeding biennium.

(2) If the required report showing proof of continuing education completion is not received by the commissioner by the individual insurance agent's biennial due date, such individual insurance agent's qualification and each and every corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the

producer satisfactorily demonstrates completion of the continuing education requirement whichever is sooner. In addition the commissioner shall assess a penalty of \$100 for each license suspended. If such insurance agent fails to furnish to the commissioner the required proof of continuing education completion and the monetary penalty within 90 calendar days of such insurance agent's biennial due date, such individual insurance agent's qualification and each and every corresponding license shall expire on such insurance agent's biennial due date. If after more than three but less than 12 months from the date the license expired, the insurance agent wants to reinstate such insurance agent's license, such individual shall provide the required proof of continuing education completion and pay a reinstatement fee in the amount of \$100 for each license suspended. If after more than 12 months from the date an insurance agent's license has expired, such insurance agent wants to reinstate such insurance agent's license, such individual shall apply for an insurance agent's license, provide the required proof of continuing education completion and pay a reinstatement fee in the amount of \$100 for each license suspended. Upon receipt of a written application from such insurance agent claiming extreme hardship, the commissioner may waive any penalty imposed under this subsection.

(3) On and after the effective date of this act, any applicant for an individual insurance agent's license who previously held a license which expires on or after June 30, 2001, because of failure to meet continuing education requirements and who seeks to be relicensed shall provide evidence that appropriate C.E.C.'s have been completed for the prior biennium.

(4) Upon receipt of a written application from an individual insurance agent, the commissioner, in cases involving medical hardship or military service, may extend the time within which to fulfill the minimum continuing educational requirements for a period of not to exceed 180 days.

(5) This section shall not apply to any inactive insurance agent during the period of such inactivity. For the purposes of this paragraph, "inactive period" or "period of inactivity" shall mean a continuous period of time of not less than two years and not more than four years starting from the date inactive status is granted by the commissioner. Before returning to active status, such inactive insurance agent shall:

(A) File a report with the commissioner certifying that such agent has met the continuing education requirement; and

(B) pay the renewal fee. If the required proof of continuing education completion and the renewal fee is not furnished at the end of the inactive period, such individual insurance agent's qualification and each and every corresponding license shall expire at the end of the period of inactivity. For issuance of a new license, the individual shall apply for a license and pass the required examination.

(6) Any individual who allows such individual's insurance agent license in this state and all other states in which such individual is licensed as an insurance agent to expire for a period of four or more consecutive years, shall apply for a new insurance agent license and pass the required examination.

(g) (1) Each course, program of study, or subject shall be submitted to and certified by the commissioner in order to qualify for purposes of continuing education.

(2) Each request for certification of any course, program of study or subject shall contain the following information:

(A) The name of provider or provider organization;

(B) the title of such course, program of study or subject;

(C) the date the course, program of study or subject will be offered;

(D) the location where the course, program of study or subject will be offered;

(E) an outline of each course, program of study or subject including a schedule of times when such material will be presented;

(F) the names and qualifications of instructors;

(G) the number of C.E.C.'s requested; and

(H) a nonrefundable C.E.C. qualification fee in the amount of \$50 per course, program of study or subject or \$250 per year for all courses, programs of study or subjects submitted by a specific provider or provider organization; and

(I) a nonrefundable annual provider fee of \$100.

(3) Upon receipt of such information, the commissioner shall grant or deny certification of any submitted course, program of study or subject as an approved subject, program of study or course and indicate the number of C.E.C.'s that will be recognized for each approved course, program of study or subject. Each approved course, program of study or subject shall be assigned by the commissioner to one or both of the following classes:

(A) Property and casualty; or
(B) life insurance (including annuity and variable contracts) and accident and health insurance.

(4) Each course, program of study or subject shall have a value of at least one C.E.C.

(5) Each provider seeking approval of a course, program of study or subject for continuing education credit shall issue or cause to be issued to each person who attends a course, program of study or subject offered by such provider a certificate of attendance. The certificate shall be signed by either the instructor who presents the course, program of study or course or such provider's authorized representative. Each provider shall maintain a list of all individuals who attend courses offered by such provider for continuing education credit for the remainder of the biennium in which the courses are offered and the entire next succeeding biennium.

The commissioner shall accept, without substantive review, any course, program of study or subject submitted by a provider which has been approved by the insurance supervisory authority of any other state or territory accredited by the NAIC. The commissioner may disapprove any individual instructor or provider who has been the subject of disciplinary proceedings or who has otherwise failed to comply with any other state's or territory's laws or regulations.

(6) The commissioner may grant or approve any specific course, program of study or course that has appropriate merit, such as any course, programs of study or course with broad national or regional recognition, without receiving any request for certification. The fee prescribed by paragraph (2) of subsection (g) shall not apply to any approval granted pursuant to this provision.

(7) The C.E.C. value assigned to any course, program of study or subject, other than a correspondence course, computer based training, interactive internet study training or other course pursued by independent study, shall in no way be contingent upon passage or satisfactory completion of any examination given in connection with such course, program of study or subject. The commissioner shall establish, by rules and regulations criteria for determining acceptability of any method used for verification of the completion of each stage of any computer based or interactive internet study training. Completion of any computer based training or interactive internet study training shall be verified in accordance with a method approved by the commissioner.

(h) Upon request, the commissioner shall provide a list of all approved continuing education courses currently available to the public.

(i) An individual insurance agent who independently studies an insurance course, program of study or subject which is not a agent's examination approved by the commissioner and who passes an independently monitored examination, shall receive credit for the C.E.C.'s assigned by the commissioner as recognition for the approved subject. No other credit shall be given for independent study.

(j) Any licensed individual insurance agent who is unable to comply with license renewal procedures due to military service or some other extenuating circumstances may request a waiver of those procedures from the commissioner. Such agent may also request from the commissioner a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

Sec. 4. (a) No provision of this act shall be construed to require an insurer to obtain an insurance agent license. For the purposes of this section, the term "insurer" shall not include any officer, director, employee, subsidiary or affiliate of an insurer.

(b) The provisions of this act shall not apply to:

(1) Any officer, director or employee of an insurer or an insurance agent who does not receive any commission on any policy written or sold to insure any risk residing, located or to be performed in this state and:

(A) Such officer's, director's or employee's activities are executive, administrative, managerial, clerical, or any combination thereof, and not directly related to the sale, solicitation or negotiation of insurance;

(B) such officer's, director's or employee's assigned duty relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of any claim on a contract of insurance; or

(C) such officer, director or employee:

(i) Acts as a special agent or agency supervisor assisting insurance agents;

(ii) limits such person's activities to providing technical advice and assistance to licensed insurance agents; and

(iii) does not sell, solicit or negotiate insurance.

(2) Any person who performs one or more of the services listed below but who receives no commission for the performance of such service:

(A) Secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance;

(B) secures and furnishes information for the purpose of enrolling individuals under such insurance plan; issuing certificates under such insurance plan or otherwise assisting in administering such insurance plan; or

(C) performs administrative services related to mass marketed property and casualty insurance where no commission is paid to such person for such service.

(3) Any employer or business entity, any officer, director, employee of such business entity, or the trustee of an employee trust plan, engaged in the administration or operation of a program of employee benefits for the employees of such employer or business entity, which involves the use of insurance issued by an insurer, so long as any person involved with such program of employee benefits is not compensated in any manner, directly or indirectly, by the company issuing the insurance contract.

(4) Any employee of an insurer, or any organization employed by an insurer, who does not participate individually in the sale, solicitation or negotiation of insurance that:

(A) Engages in the inspection, rating or classification of risks; or

(B) engages in the supervision of the training of insurance agents.

(5) Any person who does not sell, solicit or negotiate insurance that would insure any risk residing, located or to be performed in this state and who limits such person's activities in this state to advertising through any communication in any printed publication or any form of electronic mass media.

(6) Any person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured having risks insured under that contract located in more than one state, whenever:

(A) Such person is licensed as an insurance agent to sell, solicit or negotiate such insurance in the state where the insured maintains such insured's principal place of business; and

(B) the contract of insurance insures risks located in that state.

(7) Any salaried full-time employee who:

(A) Advises such employee's employer regarding the insurance interests of such employer or such employer's subsidiaries or business affiliates; and

(B) does not sell or solicit insurance or receive a commission from the sale or solicitation of such insurance.

(8) Any person who arranges for the inclusion of insurance in a credit transaction under the applicable provisions of the uniform consumer credit code, K.S.A. 16a-1-101 *et seq.* and amendments thereto.

(9) Any bank or officer or employee thereof who collects and remits a premium by charging such premium against the account of a depositor on the order of such depositor.

(10) Any agent selling credit life, health and accident insurance issued exclusively in connection with a commercial loan.

(11) Any person who arranges for the inclusion of insurance in consumer credit transactions as defined in the uniform consumer credit code, K.S.A. 16a-1-101 *et seq.* and amendments thereto.

(12) Any person who arranges for the inclusion of insurance in any real estate mortgage transaction.

(13) Any full-time student who is enrolled in an accredited high school in this state while such student participates in an insurance project sponsored by a bona fide junior achievement program.

Sec. 5. (a) Subject to the provisions of section 4, and amendments thereto, it shall be unlawful for any person to sell, solicit or negotiate any insurance within this state unless such person has been issued a license as an insurance agent in accordance with this act.

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

- (1) Is at least 18 years of age;
- (2) has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to section 9 and amendments thereto;
- (3) has paid a nonrefundable fee in the amount of \$30; and
- (4) has successfully passed the examination for each line of authority for which the applicant has applied.

(c) If the applicant is a business entity, then the commissioner shall make the following additional determinations in addition to those required by subsection (a):

- (1) The name and address of a licensed agent who shall be responsible for the business entity's compliance with the insurance laws of this state and the rules and regulations promulgated thereunder;
- (2) that each officer, director, partner and employee of the business entity who acts as an insurance agent is licensed as an insurance agent;
- (3) that the business entity has disclosed to the department all of its officers, directors and partners whether or not such officers, directors, partners and employees are licensed as insurance agents; and
- (4) that the business entity has disclosed to the department each officer, director, partner and employee who is licensed as an insurance agent.

(d) Any business entity which acts as an insurance agent and holds a direct agency appointment from an insurance company shall be required to obtain an insurance agent license.

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

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

(g) (1) Each licensed insurance agent shall notify the commissioner of any officer, director, partner or employee of such insurance agent who:

- (A) Is licensed as an individual insurance agent; and
- (B) was not disclosed in such insurance agent's application for a license or any renewal thereof.

(2) Each licensed insurance agent shall notify the commissioner of any of its officers, directors, partners or employees who:

- (A) Have terminated such relationship as an officer, director, partner or employee of such insurance agent; and
- (B) has been previously disclosed in such insurance agent's application for a license or any renewal thereof.

(3) Each licensed insurance agent shall notify the commissioner within 30 working days of occurrence of any event required to be reported under paragraphs (1) or (2) of this subsection. Failure to provide the commissioner with the information required by this subsection shall subject the licensee to a monetary penalty of \$10 per day for each working day the required information is late subject to a maximum of \$50 per person per licensing year.

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

Sec. 6. (a) Unless denied licensure pursuant to section 9, and amend-

ments thereto, a nonresident person shall receive a nonresident agent license if:

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

(2) such person has submitted the proper request for licensure and has paid to the commissioner a nonrefundable application fee of \$30 and a biennial fee of \$50;

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

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

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

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

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

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

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

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

Sec. 7. (a) Except as provided in subsection (c), the commissioner may issue a temporary insurance agent license for a period not to exceed 180 days without requiring the applicant to pass a written examination. A temporary insurance agent license may be issued to:

(1) The surviving spouse or court-appointed personal representative of a licensed insurance agent who dies or becomes mentally or physically disabled to allow adequate time:

(A) For the sale of the insurance business owned by such insurance agent;

(B) for the recovery or return of such insurance agent to the business;

or

(C) to provide for the training and licensing of new personnel to operate such insurance agent's business.

Any insurance agent license issued to a surviving spouse shall lapse upon issuance of an insurance agent license or a temporary insurance agent license to a court-appointed personal representative of such deceased person.

(2) Any member or employee of a business entity licensed as an insurance agent, upon the death or disability of an individual designated in such business entity's application or the insurance agent's license.

(3) The designee of an individual licensed as an insurance agent who is entering active service in the armed forces of the United States of America.

(4) Any other person under such other circumstance where the commissioner deems that the public interest will be best served by the issuance of such license.

(b) The commissioner may issue any order deemed necessary by the commissioner to limit the authority of any temporary licensee to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor. Such sponsor shall:

(1) Be a licensed insurance agent or insurer; and

(2) assume responsibility for all acts of the temporary licensee.

The commissioner may impose other similar requirements designed to protect insureds and the public. If the interests of the insureds or the public are endangered, the commissioner may by order revoke a temporary license. No temporary license shall continue after the owner or the personal representative disposes of the business.

(c) (1) Except as provided in paragraph (2) the commissioner may extend a temporary insurance agent license for one additional period of up to 180 days.

(2) Any temporary insurance agent license issued pursuant to paragraph (3) of subsection (a) may be renewed for such period of time as in the commissioner's opinion may be necessary for the continuation of the business of such licensed individual.

Sec. 8. (a) The commissioner shall waive examinations for an individual who applies for an insurance agent license in this state who was previously licensed for the same lines of authority in another state when the applicant establishes that:

(1) (A) The applicant is currently licensed in such other state; or

(B) if the application is received within 90 days of the cancellation of the applicant's previous license issued by such other state and if such other state certifies that, at the time of cancellation, the applicant was in good standing in such other state. In lieu of issuance of a certification by such other state that the applicant was in good standing, the commissioner may accept evidence from such other state's producer database records, maintained by the NAIC, its affiliates or subsidiaries, which indicate that the applicant is or was licensed in good standing for the line of authority requested.

(2) The applicant seeks a license as travel insurance agent to persons selling transportation tickets of common carriers, who shall act as such agent only as to transportation ticket policies, or health or accident insurance, or baggage insurance on personal effects in connection with such transportation tickets of common carriers.

(3) The applicant has been licensed in Kansas for the class of insurance the applicant is applying for and where the license has been voluntarily surrendered for not more than two years prior to the date of the application with all educational requirements satisfied for the current licensing period and where the commissioner is satisfied that the applicant is trustworthy and competent.

(4) The applicant is an applicant for a license to write insurance on growing crops in this state and has been continuously licensed to write such coverage in this state on and after April 30, 1986.

(5) The applicant has qualified by examination, but due to clerical error by an insurance company, the applicant was not certified pursuant to section 12, and amendments thereto. Such insurance company shall pay all appointment fees that would have been paid had the applicant been properly appointed plus the penalty prescribed by section 12, and amendments thereto, for each violation.

(b) Any person licensed as an insurance agent pursuant to section 6, and amendments thereto, in another state who moves to this state shall make application to become a resident licensee within 90 days after such person establishes legal residence in this state. Except as required by the commissioner by rule and regulation, no person who has been previously authorized for any line of authority shall be required to be examined in this state for the same line of authority.

Sec. 9. (a) The commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:

(1) Provided incorrect, misleading, incomplete or untrue information in the license application.

(2) Violated:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;

(B) any subpoena or order of the commissioner;

(C) any insurance law or regulation of another state; or

(D) any subpoena or order issued by the regulatory official for insurance in another state.

(3) Obtained or attempted to obtain a license under this act through misrepresentation or fraud.

(4) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business.

(5) Intentionally misrepresented the provisions, terms and conditions of an actual or proposed insurance contract or application for insurance.

(6) Been convicted of a misdemeanor or felony.

(7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto.

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

(9) Had an insurance agent license, or its equivalent, denied, suspended or revoked in any other state, district or territory.

(10) Forged another person's name to an application for insurance or to any document related to an insurance transaction.

(11) Improperly used notes or any other reference material to complete an examination for an insurance license issued under this act.

(12) Knowingly accepted insurance business from an individual who is not licensed.

(13) Failed to comply with any administrative or court order imposing a child support obligation upon the applicant or license holder.

(14) Failed to pay any state income tax or comply with any administrative or court order directing payment of state income tax.

(15) Rebated the whole or any part of any insurance premium or offered in connection with the presentation of any contract of insurance any other inducement not contained in the contract of insurance.

(16) Made any misleading representation or incomplete comparison of policies to any person for the purposes of inducing or tending to induce such person to lapse, forfeit or surrender such person's insurance then in force.

(b) In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license.

(c) Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedures act.

(d) The license of any business entity may be suspended, revoked or refused renewal if the insurance commissioner finds that any violation committed by an individual licensee employed by or acting on behalf of such business entity was known by or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and:

(1) Such violation was not reported to the insurance commissioner by such business entity; or

(2) such business entity failed to take any corrective action.

(e) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license, to render a decision suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of any violation of law for any lawful purpose:

(1) The imposition of an administrative penalty under this section;

(2) the lapse or suspension of any license issued under this act by operation of law;

(3) the licensee's failure to renew any license issued under this act; or

(4) the licensee's voluntary surrender of any license issued under this act. No such disciplinary proceeding shall be instituted against any licensee after the expiration of two years from the termination of the license.

(f) Whenever the commissioner imposes any administrative penalty or denies, suspends, revokes or refuses renewal of any license pursuant to subsection (a), any costs incurred as a result of conducting an administrative hearing authorized under the provisions of this section shall be assessed against the person who is the subject of the hearing or any busi-

ness entity represented by such person who is the party to the matters giving rise to the hearing. As used in this subsection, “costs” shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) No person whose license as an agent or broker had been suspended or revoked shall be employed by any insurance company doing business in this state either directly, indirectly, as an independent contractor or otherwise to negotiate or effect contracts of insurance, suretyship or indemnity or perform any act toward the solicitation of or transaction of any business of insurance during the period of such suspension or revocation.

(h) In lieu of taking any action under subsection (a), the commissioner may:

- (1) Censure the person; or
- (2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed \$2,500 for the same violation occurring within any six consecutive calendar months from the date of the original violation unless such person knew or should have known that the violative act could give rise to disciplinary action under subsection (a). If such person knew or reasonably should have known the violative act could give rise to any disciplinary proceeding authorized by subsection (a), the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months from the date of the imposition of the original administrative penalty.

Sec. 10. (a) No insurance company or insurance agent shall pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this act and is not so licensed.

(b) No person shall accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this act and is not so licensed.

(c) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if:

- (1) Such person was required to be licensed under this act at the time the sale, solicitation or negotiation of insurance occurred; and
- (2) such person was licensed as required by this act when the sale, solicitation or negotiation of insurance occurred.

(d) An insurance agent may place a kind or kinds of business, for which such insurance agent is licensed pursuant to this act, with an insurer for which such insurance agent is not an agent, by placing such business through an agent of such insurer.

(e) An insurance agent may divide or share in commissions with other agents licensed to write the same kind or kinds of insurance provided the solicitation of such business shall be subject to subsection (d).

(f) Any insurance agent may pay or assign a commission, service fee, brokerage or any other valuable consideration to an insurance agency or any financial holding company which does not sell, solicit or negotiate insurance in this state unless such payment or assignment violates any provision of K.S.A. 40-2404 and amendments thereto.

Sec. 11. A licensed insurance agent may receive compensation for or on account of negotiating contracts of insurance or placing or soliciting or effecting contracts of insurance. Nothing in this chapter shall abridge or restrict freedom of contract of insurance carriers or agents or brokers with reference to the amount of commissions or fees to be paid to such insurance agents and such payments are expressly authorized. Insurance agents shall have the right to compensation other than commissions from any insured or prospective insured on account of negotiation or procurement of or other services in connection with contracts of insurance policies including adjustment of claims if such compensation is based upon a written agreement between the insurance agent and insured specifying the amount of such compensation. Nothing herein contained shall affect the right of any insurance agent to recover from the insured the amount of any premium or premiums for insurance placed by or through the insurance agent.

Sec. 12. (a) Any company authorized to transact business in this state may, upon determining that the insurance agent is of good business reputation and, if an individual, has had experience in insurance or will immediately receive a course of instruction in insurance and on the policies and policy forms of such company, appoint such insurance agent as the insurance agent of the company under the license in effect for the insurance agent. The appointment shall be made on a form prescribed by the commissioner. Such form shall be sent to the commissioner within 30 days of the date the company appoints such insurance agent. A nonrefundable appointment or certification fee set forth in K.S.A. 40-252, and amendments thereto, shall be paid in accordance with the billing procedures established by the commissioner. Such procedures shall require payment of the fees annually, based on the number of insurance agents appointed during the calendar year preceding the return. The certification fees required by K.S.A. 40-252, and amendments thereto, shall be due for all insurance agents appointed by the company during the preceding calendar year, irrespective of the number of months the insurance agent was appointed for that year. The certification fee shall not be returned for any reason, and failure of the company to certify an insurance agent within 30 working days of such insurance agent's appointment shall subject the company to a penalty of not more than \$25 per calendar day from the date the appropriate return was required from the date of appointment to the date proper certification is recorded by the insurance department.

(b) Certification of other than an individual insurance agent will automatically include each licensed insurance agent who is an officer, director, partner, employee or otherwise legally associated with the corporation, association, partnership or other legal entity appointed by the company. The required annual certification fee shall be paid for each licensed insurance agent certified by the company and the prescribed reporting form shall be returned at the same time the company files its tax returns as required by K.S.A. 40-252, and amendments thereto.

(c) With respect to insurance on growing crops, evidence satisfactory to the commissioner that the insurance agent is qualified to transact insurance in accordance with standards or procedures established by any branch of the federal government shall be deemed to be the equivalent of certification by a company.

(d) Duly licensed insurance agents transacting business in accordance with the provisions of article 41 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, shall be deemed to be certified by a company for the kinds of insurance permitted under the license in effect for the insurance agent.

Sec. 13. (a) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent if:

(A) The termination is for cause;
(B) such insurance agent has committed any act which would be in violation of any provision of subsection (a) of section 9, and amendments thereto; or

(C) such insurer has knowledge that such insurance agent is engaged in any activity which would be in violation of any provision of subsection (a) of section 9, and amendments thereto.

(2) The notification shall:
(A) Be made in a format prescribed by the commissioner;
(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship; and

(C) contain:
(i) The name of the insurance agent; and
(ii) the reason for the termination of the business relationship with such insurer.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents, records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection,

the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(b) (1) Each insurer shall notify the commissioner whenever such insurer terminates a business relationship with an insurance agent for any reason not listed in subsection (a).

(2) The notification shall:

(A) Be made in a format prescribed by the commissioner;

(B) be submitted to the commissioner within 30 days of the date of the termination of the business relationship.

(3) Upon receipt of a written request from the commissioner, each insurer shall provide to the commissioner any additional data, documents, records or other information concerning the termination of the insurer's business relationship with such agent.

(4) Whenever an insurer discovers or obtains additional information which would have been reportable under paragraph (1) of this subsection, the insurer shall forward such additional information to the commissioner within 30 days of its discovery.

(c) For the purposes of this section, the term "business relationship" shall include any appointment, employment, contract or other relationship under which such insurance agent represents the insurer.

(d) (1) No insurance entity, or any agent or employee thereof acting on behalf of such insurance entity, regulatory official, law enforcement official or the insurance regulatory official of another state who provides information to the commissioner in good faith pursuant to this section shall be subject to a civil action for damages as a result of reporting such information to the commissioner. For the purposes of this section, insurance entity shall mean any insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

(2) Any document, material or other information in the control or possession of the department that is furnished by an insurance entity or an employee or agent thereof acting on behalf of such insurance entity, or obtained by the insurance commissioner in an investigation pursuant to this section shall be kept confidential by the commissioner. Such information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be required to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (2).

(4) The commissioner may share or exchange any documents, materials or other information, including confidential and privileged documents referred to in paragraph (2) of subsection (d), received in the performance of the commissioner's duties under this act, with:

(A) The NAIC;

(B) other state, federal or international regulatory agencies; and

(C) other state, federal or international law enforcement authorities.

(5) (A) The sharing or exchanging of documents, materials or other information under this subsection shall be conditioned upon the recipient's authority and agreement to maintain the confidential and privileged status, if any, of the documents, materials or other information being shared or exchanged.

(B) No waiver of an existing privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized by paragraph (1) of subsection (d).

(6) The commissioner of insurance is hereby authorized to adopt such rules and regulations establishing protocols governing the exchange of information as may be necessary to implement and carry out the provisions of this act.

(e) The provisions of paragraph (2) of subsection (d) shall expire on July 1, 2006, unless the legislature acts to reenact such provision. The provisions of paragraph (2) of subsection (d) shall be reviewed by the legislature prior to July 1, 2006.

(f) For the purposes of this section, insurance entity shall mean any

insurer, insurance agent or organization to which the commissioner belongs by virtue of the commissioner's office.

(g) Any insurance entity, including any authorized representative of such insurance entity, that fails to report to the commissioner as required under the provisions of this section or that is found by a court of competent jurisdiction to have failed to report in good faith, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be fined in accordance with section 9 and amendments thereto.

Sec. 14. (a) Subject to the provisions of section 8, and amendments thereto, the commissioner shall waive any license application requirements for a nonresident insurance agent license if:

(1) The applicant has a valid current license issued by such applicant's home state; and

(2) the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(b) A nonresident agent's satisfaction of such insurance agent's home state's continuing education requirements for licensed insurance agents shall constitute satisfaction of this state's continuing education requirements if the nonresident agent's home state accepts satisfaction of its continuing education requirements imposed upon agents from this state as satisfying the continuing education requirements imposed by the nonresident insurance agent's home state on the same basis.

Sec. 15. (a) Notwithstanding the provisions of sections 3 and 6, and amendments thereto, any person who is currently licensed as an insurance agent on the day before the effective date of this act and whose biennial due date occurred during the 24 calendar months immediately preceding the effective date of this act shall be deemed to be licensed as an insurance agent under this act unless such person's license has been suspended, revoked or refused renewal prior to the effective date of this act.

(b) Any person licensed as an insurance agent under the provisions of subsection (a) shall renew such license in accordance with the provisions of this act on or before the first occurrence of such person's biennial due date after the effective date of this act.

Sec. 16. In accordance with the provisions of the rules and regulations filing act, K.S.A. 77-415 *et seq.* and amendments thereto, the commissioner may adopt, amend and revoke rules and regulations governing the administration and enforcement of this act, including but not limited to:

(a) Criteria for approval of continuing education materials and assigning C.E.C. values for such materials;

(b) any form required to implement this act, subject to the condition that any application form shall substantially comply with any requirements imposed by the NAIC;

(c) any application for examination or licensure under this act;

(d) any examination for licensing under this act;

(e) any report which may be required by this act; and

(f) such other rules and regulations as the commissioner may deem necessary to carry out the provisions of this act.

Sec. 17. The commissioner shall remit all moneys received by or for the commissioner under the provisions of this act to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and such amount shall be credited to the insurance department service regulation fund.

Sec. 18. The commissioner may enter into any contracts or purchase any services necessary to implement the provisions of this act.

Sec. 19. K.S.A. 40-240, 40-240f, 40-241a, 40-241b, 40-241c, 40-241d, 40-241e, 40-241f, 40-241g, 40-241i, 40-242, 40-245, 40-246, 40-3701, 40-3702, 40-3703, 40-3704, 40-3705, 40-3706, 40-3707, 40-3708, 40-3709, 40-3710, 40-3711, 40-3712, 40-3713 and 40-3714 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.