

CHAPTER 83

HOUSE BILL No. 2052

(Amended by Chapters 125 and 143)

AN ACT relating to insurance; concerning the regulation thereof; amending K.S.A. 40-2a20 and 40-2b20 and K.S.A. 2008 Supp. 40-229a, 40-2c01, 40-2136, 40-3008 and 45-221 and repealing the existing sections; also repealing K.S.A. 2008 Supp. 40-2c01a.

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

New Section 1. Sections 1 through 19, and amendments thereto, shall be known and may be cited as the public adjusters licensing act, and it shall govern the qualifications and procedures for the licensing of public adjusters, on and after July 1, 2009. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims.

New Sec. 2. As used in sections 1 through 19, and amendments thereto: (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) "Catastrophic disaster" means, according to the federal response plan, an event:

(1) Declared by the president of the United States or governor of Kansas;

(2) results in large numbers of deaths and injuries;

(3) causes extensive damage or destruction of facilities that provide and sustain human needs;

(4) produces an overwhelming demand on state and local response resources and mechanisms;

(5) causes a severe long-term effect on general economic activity; and

(6) severely affects state, local and private sector capabilities to begin and sustain response activities.

(c) "Commissioner" means the state commissioner of insurance.

(d) "FBI" means the federal bureau of investigation.

(e) "Fingerprint" means an impression of the lines on a finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

(f) "Home state" means the District of Columbia and any state or territory of the United States in which a public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a law governing public adjusters substantially similar to this act, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the home state.

(g) "KBI" means the Kansas bureau of investigation.

(h) "Licensed public adjuster" means a public adjuster licensed in accordance with this act.

(i) "NAIC" means the national association of insurance commissioners and its affiliates and subsidiaries.

(j) "Person" means an individual or a business entity.

(k) "Public adjuster" means any individual who:

(1) For compensation or any other thing of value, and solely in relation to first party claims arising under insurance claims or contracts that insure the real or personal property of the insured, aids or acts on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by and limited to commercial lines insurance contracts;

(2) advertises for employment as a public adjuster of insurance claims or directly or indirectly solicits business or represents to the public that such person is a public adjuster of first party insurance claims for losses or damages to real or personal property covered by and limited to commercial lines insurance contracts; or

(3) for compensation or any other thing of value, investigates or adjusts losses or advises an insured about first party claims for losses or damages to real or personal property of the insured covered by and limited to commercial lines insurance contracts, for another person engaged in the business of adjusting losses or damages covered by and limited to commercial lines insurance contracts.

(l) "Uniform individual application" means the current version of the

NAIC uniform individual application for resident and nonresident individuals.

(m) “Uniform business entity application” means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

New Sec. 3. (a) A person shall not act as or represent that such person is a public adjuster in this state unless the person is an individual licensed as a public adjuster in accordance with this act.

(b) A licensed public adjuster shall not misrepresent to a claimant that the individual is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster, unless so appointed by an insurer in writing to act on the insurer’s behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the licensed public adjuster.

(c) Notwithstanding the provisions of this section, a license as a public adjuster shall not be required of the following:

(1) An attorney-at-law admitted to practice in this state, when acting in such person’s professional capacity as an attorney;

(2) a person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(3) a person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;

(4) a licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(5) a person who settles subrogation claims between insurers.

New Sec. 4. (a) An individual applying for a public adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license, that the statements made in the application are true, correct and complete to the best of the applicant’s knowledge and belief.

(c) In order to make a determination of license eligibility, the commissioner shall require a criminal history record check on each applicant who is not exempt from pre-licensing examination pursuant to section 7, and amendments thereto.

New Sec. 5. (a) Before issuing a public adjuster license to an applicant under this act, the commissioner shall find that the applicant:

(1) Is eligible to designate this state as the applicant’s home state or is a nonresident who is not eligible for a license under section 8, and amendments thereto;

(2) has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in section 10, and amendments thereto;

(3) is trustworthy, reliable and of good reputation, evidence of which may be determined by the commissioner;

(4) is financially responsible to exercise the rights and privileges under the license and has provided proof of financial responsibility as required in section 11, and amendments thereto;

(5) has paid an application fee of \$100; and

(6) maintains an office in the home state with public access during regular business hours or by reasonable appointment.

(b) In addition to satisfying the requirements of subsection (a), an applicant shall

(1) Be at least 18 years of age; and

(2) have successfully passed the public adjuster examination.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

New Sec. 6. (a) An applicant for a public adjuster license under this act shall pass a written examination, unless exempt from this requirement pursuant to section 7, and amendments thereto. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and

conducted under rules and regulations prescribed by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(c) An applicant who fails to appear for the examination as scheduled or fails to pass the examination may retake the examination following a waiting period of not less than seven days following the date of the first examination. If the applicant again fails to satisfactorily complete the examination, the applicant may retake the examination following a waiting period of not less than seven days following the date of the second examination. If the applicant again fails to satisfactorily complete the examination, the applicant may retake the examination following a waiting period of not less than six months following the date of the third examination, except that following a waiting period of not less than two years following the date of the third examination, the applicant will be treated as a new applicant and new examination and waiting periods shall apply.

New Sec. 7. (a) An applicant who applies for a public adjuster license in this state, who is currently licensed as a public adjuster in another state based on the individual's passage of a public adjuster examination, shall not be required to complete any pre-licensing examination.

(b) An individual licensed as a public adjuster in another state, based on the individual's passage of a public adjuster examination, who moves to this state shall make application within 90 days of establishing legal residence in this state to become a resident licensee pursuant to section 5, and amendments thereto. No pre-licensing examination shall be required of that individual to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this state and who was previously licensed as a public adjuster in this state, shall not be required to complete any pre-licensing examination, if the individual's application for licensure as a public adjuster is received within 12 months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

New Sec. 8. (a) Unless denied licensure pursuant to section 10, and amendments thereto, a nonresident individual shall receive a nonresident public adjuster license, if:

(1) The individual is currently licensed and in good standing as a resident public adjuster in that individual's home state;

(2) the individual has submitted the proper request for licensure, has paid the appropriate fee required by section 5, and amendments thereto, and, if required by the commissioner to do so, has provided proof of financial responsibility in accordance with section 11, and amendments thereto;

(3) the individual has submitted to the commissioner the appropriate completed application for licensure; and

(4) the individual's home state awards nonresident public adjuster licenses to residents of this state on the same basis.

(b) The commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in the licensee's home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner, if the home state public adjuster license terminates for any reason, unless the public adjuster has a new home state and has been issued a license as a resident public adjuster in the new home state. Notification to the state or states where the nonresident license is issued must be made as soon as practicable, but no later than 30 days of a change in the new home state resident license. The licensee shall include in such notification the licensee's new and old addresses. A new home state resident license is required for a nonresident license to remain valid, and the new home state must have reciprocity with this state, in order for the nonresident license to remain valid.

New Sec. 9. (a) An individual who has met the requirements for licensure under this act shall be issued a public adjuster license. A public adjuster license shall remain in effect, unless revoked, terminated or suspended, as long as the request for renewal is timely submitted and a license renewal fee of \$100 is paid and any other requirements for license renewal are met by the due date. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of ad-

dress, change of legal name or change of information submitted on the application within 30 days of the change.

(b) A public adjuster shall be subject to the provisions of subsection (9) of K.S.A. 40-2404, and amendments thereto.

(c) A public adjuster who allows such person's license to lapse may, within 12 months from the due date of the renewal, be issued a new public adjuster license upon the commissioner's receipt of proof that the licensee has satisfactorily completed the renewal process and the licensee's payment of a reinstatement fee of \$100. The new public adjuster license shall be effective the date the commissioner receives such proof and the reinstatement fee.

(d) A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability or some other extenuating circumstance, may request an extension of time to comply with those procedures.

(e) The public adjuster license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date and any other information the commissioner deems necessary.

(f) In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC, to perform any ministerial functions, including the collection of fees and data related to licensing that the commissioner may deem appropriate.

New Sec. 10. (a) The commissioner may suspend, revoke or refuse to issue or renew a public adjuster's license for any of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) violating:

(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) obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) misappropriating, converting or improperly withholding any monies or properties received in the course of doing insurance business;

(5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) having been convicted of a misdemeanor or felony;

(7) having admitted or committed any insurance unfair trade practice or insurance fraud;

(8) using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) having an insurance license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;

(12) knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;

(13) failing to comply with an administrative or court order imposing a child support obligation upon the applicant or license holder; or

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

(b) In addition, the commissioner may deny, suspend, revoke or refuse renewal of a public adjuster's license if the commissioner finds that the interests of the public are not properly served under such license. 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 Kansas administrative procedure act.

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

(1) Censure the individual; 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 original violation.

(d) The commissioner shall remit all such fines collected under subsection (c) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act against any individual who is under investigation for or charged with a violation of this act, even if the individual's license or registration has been surrendered or has lapsed by operation of law.

New Sec. 11. (a) Prior to issuance of a public adjuster license and for the duration of the license, the commissioner may require the applicant to furnish evidence of financial responsibility, in a format prescribed by the commissioner, by means of:

(1) A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

(A) Shall be in such reasonable amount as the commissioner may require;

(B) shall be in favor of the commissioner and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustains damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices in the applicant's capacity as a public adjuster; and

(C) shall not be terminated unless at least 30-days prior written notice has been filed by the insurer with the commissioner and given to the licensee.

(2) An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:

(A) Shall be in such reasonable amount as the commissioner may require;

(B) shall be to an account of the commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts or unfair practices in the applicant's capacity as a public adjuster; and

(C) shall not be terminated unless at least 30-days prior written notice has been filed by the issuer with the commissioner and given to the licensee.

(b) Where the commissioner has required an applicant to furnish evidence of financial responsibility pursuant to subsection (a):

(1) The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner;

(2) the commissioner may ask for the evidence of the public adjuster's financial responsibility at any time the commissioner deems relevant; and

(3) the authority to act as a public adjuster shall terminate automatically if the evidence of financial responsibility terminates or becomes impaired.

New Sec. 12. (a) As used in this section:

(1) "Biennial due date" means the date of birth of any public adjuster who is required to complete continuing education credits and report the completion of the continuing education credits to the commissioner, except that such due date shall not be earlier than two years from the date of the public adjuster's initial licensure under this act.

(2) "Biennium" means, for any public adjuster who was born in an odd-numbered year, the two-year period starting with the public adjuster's biennial due date in 2011 and each two-year period thereafter. For any public adjuster who was born in an even-numbered year, such term

means the two-year period starting with the public adjuster's biennial due date in 2012 and each two-year period thereafter.

(b) An individual, who holds a public adjuster license and who is not exempt under subsection (d), shall satisfactorily complete a minimum of 12 hours of continuing education courses, which shall include 11 hours of property/casualty or general continuing education courses and one hour of ethics, reported on a biennial basis in conjunction with the license renewal cycle. Only continuing education courses approved by the commissioner shall be used to satisfy the requirements of this subsection.

(c) Unless suspended, revoked or refused renewal pursuant to section 10, and amendments thereto, a public adjuster's license shall remain in effect as long as the education requirements for a resident public adjuster are met by such public adjuster's biennial due date.

(d) The continuing education requirements of this section shall not apply to licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.

New Sec. 13. (a) No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee or other thing of value equal to more than 10% of any insurance settlement or proceeds.

(b) A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling first party claims in this state, if that person is a business entity or is an individual required to be licensed under this act and is not so licensed.

(c) A person shall not accept a commission, service fee or other valuable consideration for investigating or settling first party claims in this state, if that person is a business entity or is an individual required to be licensed under this act and is not so licensed.

(d) No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit or other thing of value, prior to settlement of a claim.

New Sec. 14. (a) Public adjusters shall ensure that all contracts for their services are in writing and contain the following:

- (1) Legible full name of the public adjuster signing the contract;
- (2) permanent home state business address and phone number of the public adjuster;
- (3) the public adjuster's license number;
- (4) title of "public adjuster contract";
- (5) the insured's full name, street address, insurance company name and policy number, if known or upon notification;
- (6) a description of the loss and its location, if applicable;
- (7) description of services to be provided to the insured;
- (8) signatures of the public adjuster and the insured;
- (9) the date the contract was signed by the public adjuster and the date the contract was signed by the insured;
- (10) attestation language stating that the public adjuster is fully bonded pursuant to this act; and
- (11) full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services to be rendered by the public adjuster for or on behalf of the insured.

(b) The public adjuster contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified. Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the commissioner.

(c) If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

- (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
- (2) inform the insured that the loss recovery amount might not be increased by the insurer; and
- (3) be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to

pay from the insurer.

(d) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including, but not limited to, any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. As used in this subsection, the word "firm" shall include any individual or business entity.

(e) A public adjuster contract may not contain any contract term that:

(1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

(2) requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;

(3) imposes collection costs or late fees; or

(4) precludes a public adjuster from pursuing civil remedies.

(f) Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(1) Property insurance policies obligate the insured to present a claim to the insured's insurance company for consideration;

(2) there are three types of adjusters that could be involved in that process, and they are as follows:

(A) A company adjuster who is an employee of an insurance company, represents the interest of the insurance company, is paid by the insurance company and will not charge the insured a fee;

(B) an independent adjuster who is hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim, who is paid by the insured's insurance company and will not charge the insured a fee; or

(C) a public adjuster who does not work for any insurance company but works for an insured to assist in the preparation, presentation and settlement of a claim. An insured engages a public adjuster by signing a contract agreeing to pay the public adjuster a fee or commission based on a percentage of the settlement, or other method of compensation;

(3) the insured is not required to hire a public adjuster to help the insured meet the insured's obligations under the policy, but has the right to do so;

(4) the insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster and the insurer's attorney, or any other person regarding the settlement of the insured's claim;

(5) the public adjuster is not a representative or employee of the insurer;

(6) the salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

(g) The contracts shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the commissioner.

(h) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(i) The insured has the right to rescind the public adjuster contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three business day period.

(j) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within 15 business days following the receipt by the public adjuster of the rescission notice.

New Sec. 15. (a) A public adjuster shall maintain a complete record

of each transaction as a public adjuster. The records required by this section shall include the following:

- (1) Name of the insured;
- (2) date, location and amount of the loss;
- (3) copy of the contract between the public adjuster and insured;
- (4) name of the insurer and the amount, expiration date and number of each policy carried by the insured with respect to the loss;
- (5) itemized statement of the insured's recoveries;
- (6) itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;
- (7) a register of all moneys received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including fees, transfers and disbursements from a trust account and all transactions concerning all interest-bearing accounts;
- (8) name of public adjuster who executed the contract;
- (9) name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and
- (10) evidence of financial responsibility in the format prescribed by the commissioner.

(b) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the commissioner at all times.

(c) Records submitted to the commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the commissioner and shall not be open for inspection under the Kansas open records act.

(d) The provisions of subsection (c) shall expire on July 1, 2014, unless the legislature acts to reenact such provisions. The provisions of subsection (c) shall be reviewed by the legislature prior to July 1, 2014.

New Sec. 16. (a) A public adjuster is obligated, under the public adjuster's license, to serve with objectivity and complete loyalty, the interest of the insured only and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the public adjuster, as will best serve the insured's insurance claim needs and interest.

(b) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.

(c) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this act.

(d) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in section 14, and amendments thereto.

(e) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured, unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in section 14, and amendments thereto.

(f) The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person, unless disclosed to the insured:

- (1) With whom the public adjuster has a financial interest; or
- (2) from whom the public adjuster may receive direct or indirect compensation for the referral.

(g) The public adjuster shall disclose to an insured if the public adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. As used in this subsection "firm" shall include any business entity or individual.

(h) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing, including the source and amount of any such compensation.

(i) Public adjusters shall adhere to the following general ethical requirements:

- (1) A public adjuster shall not undertake the adjustment of any claim

if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;

(2) a public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;

(3) no licensed public adjuster may represent or act as a company adjuster or independent adjuster on the same claim;

(4) the public adjuster contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;

(5) a public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work; and

(6) a public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(j) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

New Sec. 17. (a) The public adjuster shall report to the commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(b) Within 30 days of the initial pretrial hearing date, the public adjuster shall report to the commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

New Sec. 18. The commissioner shall promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this act. The commissioner shall adopt such rules and regulations by July 1, 2010.

New Sec. 19. If any provisions of this act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

New Sec. 20. On and after July 1, 2009, the commissioner may adopt by rules and regulations, any later version of the RBC instructions promulgated by the NAIC, which are consistent with the provisions of this act, including the provisions of K.S.A. 40-2c03, and amendments thereto, provided that before any later version may be adopted by the commissioner in rules and regulations, the commissioner shall prepare an impact statement indicating the projected impact upon domestic insurers and notify any affected insurer of the projected impact. If the projected impact is likely to cause the amount of a domestic insurer's total adjusted capital or its RBC report for the previous year to vary by more than 2.5% or to cause a domestic insurer's control level to change upon application of the later version of the risk-based capital instructions, then such later version shall not be adopted in rules and regulations until such later version is approved by legislative action.

Sec. 21. On and after July 1, 2009, K.S.A. 2008 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commission-

ers.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~2007~~ 2008, or any later version promulgated by the NAIC as may be adopted by the commissioner under section 20, and amendments thereto.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

(o) "Commissioner" means the commissioner of insurance.

Sec. 22. On and after July 1, 2009, K.S.A. 2008 Supp. 40-229a is hereby amended to read as follows: 40-229a. (a) (1) (A) All cash, securities, real estate deeds, mortgages or other assets deposited with the commissioner of insurance pursuant to the provisions of the insurance code of the state of Kansas shall be deposited with any Kansas financial institution acceptable to the commissioner through which a custodial or controlled account, a joint custody receipt arrangement or any combination of these or other measures that are acceptable to the commissioner is used.

(B) All such deposits shall be held by such financial institution on behalf of the commissioner in trust for the use and benefit of such company and such company's policyholders and creditors. Such assets shall be released from such deposits only upon written approval of the commissioner.

(C) All income from deposits belong to the depositing organization and shall be paid to it as it becomes available. The commissioner, upon written approval, may direct the financial institution to permit exchange of securities or assets upon deposit of specified substituted securities or assets.

(D) All forms for deposit, withdrawal or exchange shall be prescribed, prepared and furnished by the commissioner and no facsimile signatures shall be used or recognized.

(E) The commissioner or assistant commissioner of insurance or insurance department employee authorized by the commissioner may at any time inspect the securities on deposit in any such financial institution.

(F) Nothing in this act shall be construed to hold the state of Kansas, the commissioner, assistant commissioner or authorized employee liable

either personally or officially for any default of such financial institution.

(2) Real estate shall be deposited with the commissioner by the depositing organization executing a deed or assignment conveying title thereto to the commissioner, in trust for the use and benefit of such company. Such deeds or assignment shall be recorded in the office of the register of deeds of the county in which such real estate is situated. When the depositing organization is authorized to withdraw real estate from deposit, the commissioner shall execute deeds to such organization or such other persons, companies or corporations as directed by such organization. The costs of registering such deeds shall be paid by the depositing organization.

(3) All deposits made with the commissioner shall be audited by the commissioner and the state treasurer not less frequently than once each three years. The commissioner may accept an audit performed by another governmental agency acceptable to the commissioner, in lieu of this audit requirement.

(b) Assets, except real estate assets, deposited pursuant to this section shall be held by the custodian on behalf of the commissioner as in trust for the use and benefit of the depositing organization. Such assets shall remain the specific property of the organization and shall not be subject to the claim of any third party against the custodian.

(c) The custodian is authorized to redeposit such assets with a clearing corporation as defined in K.S.A. 84-8-102 and amendments thereto, if such clearing corporation is domiciled in the United States. The custodian is authorized to hold such assets through the federal reserve bank book-entry system.

(d) The commissioner shall adopt rules and regulations to establish requirements relating to deposits under this section appropriate to assure the security and safety of such deposits, including but not limited to the following:

- (1) Capital and surplus of the custodian;
- (2) title in which deposited assets are held;
- (3) records to be kept by the custodian and the commissioner's access thereto;
- (4) periodic reports by the custodian to the commissioner;
- (5) responsibility of the custodian to indemnify the depositor for loss of deposited assets;
- (6) withdrawal or exchange of deposited assets; and
- (7) authority of the commissioner to terminate the deposit if the condition of the custodian should threaten the security of the deposited assets.

(e) As used in this section:

- (1) "Commissioner" means the commissioner of insurance; and
- (2) "financial institution" means *a federal home loan bank*, a savings and loan association and savings bank organized under the laws of the United States or another state, a national bank, state bank or trust company, which have main or branch offices in this state, shall at all times during which such *federal home loan bank*, savings and loan association, savings bank, national bank, state bank or trust company acts as a custodian be:

(A) No less than adequately capitalized as determined by the standards adopted by the ~~United States banking regulators~~ *regulator charged with establishing standards for, and assessing, the institution's solvency;*

(B) regulated by either state or federal banking laws, *the federal home loan bank act, as amended* or is a member of the federal reserve system; and

(C) legally qualified to accept custody of securities.

(3) "Main office" and "branch" shall have the meanings ascribed to such terms in K.S.A. 9-1408 and amendments thereto.

Sec. 23. On and after July 1, 2009, K.S.A. 40-2a20 is hereby amended to read as follows: 40-2a20. (a) Any insurance company other than life organized under any law of this state, with the direction or approval of a majority of its board of directors or authorized committee thereof, may:

- (1) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;
- (2) designate a state or national bank *or a federal home loan bank* having trust powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or
- (3) designate a state or national bank having trust powers as trustee

to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

(b) Under the provisions of paragraphs (2) and (3) of subsection (a), the designated state or national bank *or the federal home loan bank* may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance company and its designated bank and must impose the same degree of responsibility on the bank as if such securities were held in definitive form by such bank.

(c) As used in this section "clearing corporation" means: (1) A corporation defined in subsection (5) of K.S.A. 84-8-102, and amendments thereto;

(2) any organization or system for clearance and settlement of securities transactions which is operated or owned by a bank, trust company or other entity that is subject to regulation by the United States federal reserve board or the United States comptroller of the currency; or

(3) any clearing agency registered with the securities and exchange commission pursuant to the securities exchange act of 1934, section 17A, and amendments thereto.

Sec. 24. On and after July 1, 2009, K.S.A. 40-2b20 is hereby amended to read as follows: 40-2b20. (a) Any life insurance company organized under any law of this state, with the direction or approval of a majority of its board of directors, may:

(1) Adopt a nominee name unique to such insurance company in which such insurance company's securities may be registered;

(2) designate a state or national bank *or a federal home loan bank* having trust powers to obtain a nominee name for such insurance company in which such insurance company's securities may be registered; or

(3) designate a state or national bank having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.

(b) Under the provisions of paragraphs (2) and (3) of subsection (a), the designated state or national bank *or the federal home loan bank* may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the commissioner of insurance, between the insurance company and its designated bank and must impose the same degree of responsibility on the bank as if such securities were held in definitive form by such bank.

(c) As used in this section "clearing corporation" means: (1) A corporation defined in subsection (3) of K.S.A. 84-8-102, and amendments thereto;

(2) any organization or system for the clearance and settlement of securities transactions which is operated or owned by a bank, trust company or other entity that is subject to regulation by the United States federal reserve board or the United States comptroller of the currency; or

(3) any clearing agency registered with the securities and exchange commission pursuant to the securities exchange act of 1934, section 17A, and amendments thereto.

Sec. 25. On and after July 1, 2009, K.S.A. 2008 Supp. 40-2136 is hereby amended to read as follows: 40-2136. Each issuer of qualified long-term care partnership program policies in this state shall: (a) Provide regular reports to both the secretary of the United States department of human services in accordance with federal law and regulations and to the Kansas health policy authority and the commissioner of insurance as provided in section 6021 of the federal deficit reduction act of 2005, public law 109-171.

(b) Provide to consumers a notice explaining the benefits associated with a partnership policy and indicating that at the time issued, the policy is a qualified state long-term care insurance partnership policy at a time and in a manner to be determined by the commissioner of insurance.

(c) Submit a partnership certification form signed by an officer of the company with all policies submitted for certification as partnership policies.

(d) Obtain verification that producers receive training required by the commissioner of insurance before a producer is permitted to sell, solicit or negotiate the insurer's long-term care insurance products, maintain

records of compliance, and make the verification available to the commissioner of insurance upon request.

(e) Maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the department of insurance to provide assurance to the Kansas health policy authority that producers have received the training required by the commissioner of insurance and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medical assistance in this state. These records shall be maintained and made available to the commissioner of insurance upon request.

(f) (1) *Offer, on a one time basis, in writing, to all existing policyholders that were issued long-term care coverage of the type certified by the insurer on or after February 8, 2006, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under Kansas' long-term care partnership program. The mandatory offer of an exchange shall only apply to products issued by the insurer that are comparable to the type of policy form, such as group policies and individual policies and on the policy series that the company has certified as partnership qualified;*

(2) *the offer shall remain open for a minimum of 45 days from the date of mailing by the insurer;*

(3) *the offer shall be made on a nondiscriminatory basis without regard to the age or health status of the insured. However, the insurer may underwrite if the policy is amended to provide additional benefits or the exchange would require the issuance of a new policy. Any portion of the policy that was issued prior to the exchange date shall be priced based on the policyholder's age when the policy was originally issued. Any portion of the policy that is added as a result of the exchange may be priced based on the policyholder's age at the time of the exchange;*

(4) *if there is no change in coverage material to the risk, policies exchanged under this provision shall not be subject to any medical underwriting;*

(5) *notwithstanding paragraphs (1) and (3), an insurer is not required to offer an exchange to an individual who is eligible for benefits within an elimination period, who is, or who has been in claim status or who would not be eligible to apply for coverage due to issue age or plan design limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including plan design, underwriting, if applicable and payment of the required premium;*

(6) *policies issued pursuant to this section shall be considered exchanges and not replacements and are not subject to K.A.R. 40-4-37i; and*

(7) *a policy received in an exchange after the effective date of the long-term care partnership program act is treated as newly issued and is eligible for partnership policy status. For purposes of applying the medicaid rules relating to Kansas' long-term care partnership program, the addition of a rider, endorsement or change in schedule page for a policy may be treated as giving rise to an exchange.*

Sec. 26. On and after January 1, 2010, K.S.A. 2008 Supp. 40-3008 is hereby amended to read as follows: 40-3008. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, any or all of the policies or contracts of the impaired insurer;

(2) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate the provisions of paragraph (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1); or

(3) lend money to the impaired insurer.

(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2) of this subsection, the association shall, in its discretion, either: (A) Take any of the actions specified in subsection (a), subject to the conditions therein; or

(B) provide substitute benefits in lieu of the contractual obligations

of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of paragraph (1) of this subsection only if: (A) The laws of the impaired insurer's state of domicile provide that: (i) The delinquency proceeding shall not be dismissed;

(ii) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and

(iii) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations; and

(B) (i) with respect to the impaired insurer who is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or

(ii) with respect to the impaired insurer who is a foreign or alien insurer: (aa) It has been prohibited from soliciting or accepting new business in this state;

(bb) its certificate of authority has been suspended or revoked in this state; and

(cc) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either: (1) (A) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer;

(B) assure payment of the contractual obligations of the insolvent insurer; and

(C) provide such moneys, pledges, guarantees or other means as are reasonably necessary to discharge such duties; or

(2) with respect only to life and health policies, provide benefits and coverages in accordance with subsection (d).

(d) When proceeding under subsection (b)(1)(B) or (c)(2), the association shall, with respect only to life and health insurance policies: (1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred: (A) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to such policies;

(B) with respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to such policies;

(2) make diligent efforts to provide all known insureds or group policyholders with respect to group policies 30 days' notice of the termination of the benefits provided; and

(3) with respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4) of this subsection, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class;

(4) (A) in providing the substitute coverage required under paragraph (3) of this subsection, the association may offer either to reissue the terminated coverage or to issue an alternative policy;

(B) alternative or reissued policies shall be offered without requiring

evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy; and

(C) the association may reinsure any alternative or reissued policy;

(5) (A) alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency;

(B) alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premiums charged. The association shall set the premiums in accordance with a table of rates which it shall adopt. The premiums shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten;

(C) any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association;

(6) if the association elects to reissue the insured's terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval by the commissioner and by a court of competent jurisdiction;

(7) the association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

(e) When proceeding under subsection (b)(1)(B) or (c) with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subsection (n)(3).

(f) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy or coverage under this act with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this act.

(g) Premiums due after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

(h) The protection provided by this act shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(i) In carrying out its duties under subsections (b) and (c), the association may, subject to approval by the court: (1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the association's duties under this act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and

(2) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in subsections (b)(1)(B), (c) and (d) of this section, the commissioner shall have the powers and duties of the association under this act with respect to impaired or insolvent insurers.

(k) The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

(l) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concern-

ing which the association is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(m) (1) Any person receiving benefits under this act shall be deemed to have assigned the rights under any cause of action relating to the covered policy or contract to the association to the extent of the benefits received because of this act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this act upon such person.

(2) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this act.

(3) In addition to paragraphs (1) and (2), the association shall have all common-law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(n) The contractual obligations of the impaired or insolvent insurer for which the association becomes, or may become, liable shall be as great as but no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency unless such obligations are reduced as permitted by subsection (e) but the association shall not provide coverage for: (1) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(2) any policy or contract of reinsurance, unless assumption certificates have been issued;

(3) any portion of a policy or contract to the extent that the rate of interest on which it is based: (A) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(4) any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited, to benefits payable by an employer, association or similar entity under: (A) A multiple employer welfare arrangement as defined in section 514 of the employee retirement income security act of 1974, as amended;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract;

(5) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(6) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state; ~~and~~

(7) any unallocated annuity contract, except as provided in subsection

(b) of K.S.A. 40-3003 and amendments thereto; and

(8) a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to part C or part D of subchapter XVIII, chapter 7 of title 42 of the United State code (commonly known as medicare part C & D) or any regulations issued pursuant thereto.

(o) The benefits for which the association may become liable shall in no event exceed the lesser of: (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) with respect to any one life, regardless of the number of policies or contracts: (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) \$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values; or

(C) ~~\$100,000~~ \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(D) In no event shall the association be liable to expend more than \$300,000 in the aggregate with respect to any one life as provided in paragraph (A), (B) or (C) of this subsection.

(E) ~~Any increased limits of liability of the guaranty association by this act shall not apply to an impaired or insolvent insurer for which the guaranty association becomes liable prior to July 1, 1993~~ *The guaranty association's limits of liability with respect to the obligations of any impaired or insolvent insurer shall be the limits of liability in effect under this act on the date the guaranty association became liable for that impaired or insolvent insurer.*

The provisions of subsection (o) shall not apply to annuity contracts for future economic loss procured pursuant to a judgment or settlement agreement in a medical malpractice liability action.

(p) The association may: (1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under K.S.A. 40-3009 and amendments thereto, and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

(5) take such legal action as may be necessary to avoid payment of improper claims; or

(6) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this act.

(q) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

(r) The association shall pay any and all persons who, as a provider, may have claims as a result of a member insurer being found insolvent between March 1, 1999 and June 1, 1999.

Sec. 27. On and after July 1, 2009, K.S.A. 2008 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2008 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2008 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary

of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq. and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20 and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, do-

mestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse.

(48) *Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically

prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

New Sec. 28. (a) An individual who qualifies as an assistance eligible individual on or after March 1, 2009, under the American recovery and reinvestment act of 2009 may elect special assisted continuation of coverage as provided in the American recovery and reinvestment act of 2009.

(b) An individual who does not have continuation of coverage as described in K.S.A. 40-2209(i), and amendments thereto, in effect on March 1, 2009, but who would be an assistance eligible individual under the American recovery and reinvestment act of 2009 if such assistance had been in effect, may elect special assisted continuation of coverage pursuant to this subsection.

(c) The employer of the terminated employee shall provide the additional notice of the right to elect coverage pursuant to this section as required by the American recovery and reinvestment act of 2009.

(d) Election as required by the American recovery and reinvestment act of 2009 shall be made by an assistance eligible individual to the insurer.

(e) Special assisted continuation of coverage elected pursuant to this section shall commence with the first period of assisted continuation of coverage beginning on or after the date of the enactment of the American recovery and reinvestment act of 2009 and shall extend for the period of special assisted continuation of coverage allowed by the American recovery and reinvestment act of 2009 and amendments thereto.

(f) With respect to individuals who elect special assisted continuation coverage pursuant to this section, the 18 months of continuation coverage required by K.S.A. 40-2209(i), and amendments thereto, shall commence on the date an individual qualifies for continuation of coverage and shall terminate 18 months thereafter with the period of special assisted continuation coverage included therein.

(g) With respect to an individual who elects special assisted coverage pursuant to this section, any preexisting conditions arising between the date of the qualifying event and ending with the first period of coverage beginning on or after the date of the enactment of the American recovery and reinvestment act of 2009 shall be disregarded for the purpose of determining the 63-day period referred to in K.S.A. 40-2209(a)(8)(L), and amendments thereto.

(h) An individual applying for special assisted continuation coverage must provide the individual's social security number to the insurer.

(i) Premiums for special assistance continuation of coverage shall be paid by the assistance eligible individual to the insurance carrier.

(j) An individual eligible for assisted continuation of coverage who elects such coverage shall be entitled to the premium subsidy provided in the American recovery and reinvestment act of 2009, and amendments thereto, so long as they meet the requirements for special assisted continuation coverage pursuant to the terms of the American recovery and reinvestment act of 2009.

(k) The insurer shall pay the subsidy required by the American recovery and reinvestment act of 2009, and amendments thereto. Such insurer shall have the right to reimbursement for the subsidy as set forth in the American recovery and reinvestment act of 2009.

(l) In all cases in which an individual described above pays the premium for continuation of coverage, the individual shall have the right to continuation of coverage for 18 months as set forth in K.S.A. 40-2209(i), and amendments thereto, with any period of premium subsidy counted toward that individual's period of continuation of coverage. In no case, shall an individual be entitled to more than 18 months of continuing of coverage or more than nine months of special assisted continuing coverage.

(m) The provisions of this section shall expire on January 1, 2011.

Sec. 29. On and after July 1, 2009, K.S.A. 40-2a20 and 40-2b20 and K.S.A. 2008 Supp. 40-229a, 40-2c01, 40-2c01a, 40-2136 and 45-221 are hereby repealed.

Sec. 30. On and after January 1, 2010, K.S.A. 2008 Supp. 40-3008 is

hereby repealed.

Sec. 31. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 13, 2009.

Published in the *Kansas Register* April 23, 2009.
