

## HOUSE BILL No. 2128

By Committee on Insurance

Requested by Eric Turek on behalf of Kansas Insurance Department

1-28

1 AN ACT concerning insurance; relating to the regulation thereof;  
2 authorizing the commissioner of insurance to select and announce the  
3 version of certain instructions, calculations and documents in effect for  
4 the upcoming calendar year and cause such announcement to be  
5 published in the Kansas register; allowing certain life insurers to follow  
6 health financial reports; adopting certain provisions from the national  
7 association of insurance commissioners holding company system  
8 regulatory act relating to group capital calculations and liquidity stress  
9 testing; amending K.S.A. 40-2d01, 40-3302, 40-3305, 40-3306, 40-  
10 3307 and 40-3308 and K.S.A. 2024 Supp. 40-2c01 and repealing the  
11 existing sections; also repealing K.S.A. 40-249 and 40-2c29.

12

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

14 New Section 1. (a) The commissioner is hereby authorized to select  
15 and announce the version of insurance calculations, instructions  
16 promulgated by the NAIC or other documents required by the NAIC that  
17 shall be in effect for the next calendar year. Not later than December 1 of  
18 each year, the commissioner shall cause such announcement to be  
19 published in the Kansas register.

20 (b) Calculations and instructions include, but are not limited to, risk-  
21 based capital instructions, as used in K.S.A. 40-2c01, and amendments  
22 thereto, risk-based capital managed care instructions, as used in K.S.A.  
23 40-2d01, and amendments thereto, and group capital calculation  
24 instructions, as used in K.S.A. 40-3302, and amendments thereto.

25 Sec. 2. K.S.A. 2024 Supp. 40-2c01 is hereby amended to read as  
26 follows: 40-2c01. As used in this act:

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

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

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

35 (d) "Foreign insurer" means any insurance company or risk retention

1 group not domiciled in this state that is licensed or registered to do  
 2 business in this state pursuant to article 41 of chapter 40 of the Kansas  
 3 Statutes Annotated, and amendments thereto, or K.S.A. 40-209, and  
 4 amendments thereto.

5 (e) "NAIC" means the national association of insurance  
 6 commissioners.

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

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

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

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

21 (j) "RBC instructions" means the risk-based capital instructions  
 22 promulgated by the NAIC that are in effect ~~on December 31, 2023, or any~~  
 23 ~~later version promulgated by the NAIC as may be adopted by the~~ *as*  
 24 *announced and noticed by the* commissioner ~~under K.S.A. 40-2e29~~  
 25 *pursuant to section 1*, and amendments thereto.

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

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

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

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

36 (4) "mandatory control level RBC" means the product of 0.70 and the  
 37 authorized control level RBC.

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

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

1 amendments thereto.

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

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

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

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

7 Sec. 3. K.S.A. 40-2d01 is hereby amended to read as follows: 40-  
8 2d01. As used in K.S.A. 40-2d01 through 40-2d30, and amendments  
9 thereto:

10 (a) "Adjusted RBC report" means an RBC report ~~which~~ *that* has been  
11 adjusted by the commissioner in accordance with K.S.A. 40-2d04, and  
12 amendments thereto.

13 (b) "Corrective order" means an order issued by the commissioner  
14 specifying corrective actions ~~which~~ *that* the commissioner has determined  
15 are required.

16 (c) "Domestic health organization" means any health organization  
17 ~~which~~ *that* is licensed and organized in this state.

18 (d) "Foreign health organization" means any health organization not  
19 domiciled in this state ~~which~~ *that* is licensed to do business in this state  
20 pursuant to articles 19a, 19c or 32 of chapter 40 of the Kansas Statutes  
21 Annotated, and amendments thereto.

22 (e) "NAIC" means the national association of insurance  
23 commissioners.

24 (f) "Health organization" means a health maintenance organization,  
25 limited health service organization, dental or vision plan, hospital, medical  
26 and dental indemnity or service corporation or other managed care  
27 organization licensed under articles 19a, 19c or 32 of chapter 40 of the  
28 Kansas Statutes Annotated, and amendments thereto. ~~This definition shall,~~  
29 *or an organization that is licensed as a life and health insurer under*  
30 *article 4 of chapter 40 of the Kansas Statutes Annotated, and amendments*  
31 *thereto, and has been determined by the commissioner to report*  
32 *predominantly health lines of business in accordance with a health*  
33 *statement test. "Health organization" does not include an organization that*  
34 *is licensed as either a life and health insurer or a property and casualty*  
35 *insurer under articles 4, 5, 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the*  
36 *Kansas Statutes Annotated, and amendments thereto, and that is otherwise*  
37 *subject to either the life or property and casualty RBC requirements in*  
38 *K.S.A. 40-2c01 et seq., and amendments thereto.*

39 (g) "RBC" means risk-based capital.

40 (h) "RBC instructions" means the risk-based capital instructions for  
41 managed care organizations promulgated by the NAIC ~~which~~ *that* are in  
42 effect ~~on December 31, 1999, or any later version as adopted by as~~  
43 *announced and noticed by the commissioner in rules and regulations*

1 *pursuant to section 1, and amendments thereto.*

2 (i) "RBC level" means a health organization's company action level  
3 RBC, regulatory action level RBC, authorized control level RBC, or  
4 mandatory control level RBC where:

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

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

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

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

14 (j) "RBC plan" means a comprehensive financial plan containing the  
15 elements specified in K.S.A. 40-2d05, and amendments thereto. If the  
16 commissioner rejects the RBC plan, and it is revised by the health  
17 organization, with or without the commissioner's recommendation, the  
18 plan shall be called the "revised RBC plan."

19 (k) "RBC report" means the report required by K.S.A. 40-2d02, 40-  
20 2d03 and 40-2d04, and amendments thereto.

21 (l) "Total adjusted capital" means the sum of:

22 (1) A health organization's capital and surplus as determined in  
23 accordance with the annual financial statements required to be filed under  
24 ~~articles 19a, 19e or 32~~ of chapter 40 of the Kansas Statutes Annotated, and  
25 amendments thereto; and

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

27 (m) "Commissioner" means the commissioner of insurance.

28 Sec. 4. K.S.A. 40-3302 is hereby amended to read as follows: 40-  
29 3302. As used in the insurance holding company act, unless the context  
30 otherwise requires:

31 (a) "Affiliate" of, or person "affiliated" with, a specific person, means  
32 a person that directly, or indirectly through one or more intermediaries,  
33 controls, is controlled by, or is under common control with, the person  
34 specified.

35 (b) "Commissioner of insurance" or "commissioner" means the  
36 commissioner of insurance, the commissioner's deputies, or the insurance  
37 department, as appropriate.

38 (c) "Control" including the terms "controlling," "controlled by" and  
39 "under common control with," means the possession, direct or indirect, of  
40 the power to direct or cause the direction of the management or policies of  
41 a person, whether through the ownership of voting securities, by contract  
42 other than a commercial contract for goods or nonmanagement services, or  
43 otherwise, unless the power is the result of an official position with or

1 corporate office held by the person. Control shall be presumed to exist if  
2 any person, directly or indirectly, owns, controls, holds with the power to  
3 vote, or holds proxies representing 10% or more of the voting securities of  
4 any other person. This presumption may be rebutted by a showing made in  
5 the manner provided by K.S.A. 40-3305(k), and amendments thereto, that  
6 control does not exist in fact. The commissioner of insurance may  
7 determine, after a hearing in accordance with the provisions of the Kansas  
8 administrative procedure act, that control exists in fact, notwithstanding  
9 the absence of a presumption to that effect.

10 (d) "Enterprise risk" means any activity, circumstance, event or series  
11 of events involving one or more affiliates of an insurer that, if not  
12 remedied promptly, is likely to have a material adverse effect upon the  
13 financial condition or liquidity of the insurer or its insurance holding  
14 company system as a whole, including, but not limited to, anything that  
15 would cause the insurer's risk-based capital to fall into company action  
16 level RBC, as such term is defined in either K.S.A. 40-2c01 et seq., ~~and~~  
17 ~~amendments thereto, or K.S.A. 40-2d01 et seq., and amendments thereto,~~  
18 as appropriate, or would cause the insurer to be in hazardous financial  
19 condition as set forth in K.S.A. 40-222b, 40-222c and 40-222d, and  
20 amendments thereto.

21 (e) *"Financial analysis handbook" means the version of the NAIC*  
22 *financial analysis handbook adopted by the NAIC and in effect that has*  
23 *been selected and noticed by the commissioner pursuant to section 1, and*  
24 *amendments thereto.*

25 (f) *"Group capital calculation instructions" means the group capital*  
26 *calculation instructions selected and announced by the commissioner*  
27 *pursuant to section 1, and amendments thereto.*

28 (g) "Group-wide supervisor" means the regulatory official authorized  
29 to engage in conducting and coordinating group-wide supervision  
30 activities who is determined or acknowledged by the commissioner under  
31 K.S.A. 40-3318, and amendments thereto, to have sufficient significant  
32 contacts with the internationally active insurance group.

33 ~~(h)~~(h) "Insurance holding company system" means two or more  
34 affiliated persons, one or more of which is an insurer.

35 ~~(g)~~(i) "Insurer" means any corporation, company, association, society,  
36 fraternal benefit society, health maintenance organization, nonprofit  
37 medical and hospital service corporation, nonprofit dental service  
38 corporation, reciprocal exchange, person or partnership writing contracts  
39 of insurance, indemnity or suretyship in this state upon any type of risk or  
40 loss except lodges, societies, persons or associations transacting business  
41 pursuant to the provisions of K.S.A. 40-202, and amendments thereto.

42 ~~(h)~~(j) "Internationally active insurance group" means an insurance  
43 holding company system that:

1 (1) Includes an insurer registered under K.S.A. 40-3305, and  
2 amendments thereto; and

3 (2) meets the following criteria:

4 (A) Has premiums written in at least three countries;

5 (B) the percentage of gross premiums written outside the United  
6 States is at least 10% of the insurance holding company system's total  
7 gross written premiums; and

8 (C) based on a three-year rolling average, the total assets of the  
9 insurance holding company system are at least \$50,000,000,000 or the  
10 total gross written premiums of the insurance holding company system are  
11 at least \$10,000,000,000.

12 ~~(j)~~(k) "NAIC" means the national association of insurance  
13 commissioners.

14 (l) "NAIC liquidity stress test framework" means the separate NAIC  
15 publication that includes the history of the NAIC's development of  
16 regulatory liquidity stress testing, the scope criteria applicable for a  
17 specific data year and the liquidity stress test instructions and reporting  
18 templates for a specific data year and such scope criteria, instructions and  
19 reporting templates as adopted by the NAIC and as amended by the NAIC  
20 from time to time in accordance with the procedures adopted by the NAIC  
21 and as selected and announced by the commissioner pursuant to section 1,  
22 and amendments thereto.

23 (m) "Person" means an individual, corporation, a partnership, an  
24 association, a joint stock company, a trust, an unincorporated organization,  
25 any similar entity or any combination of the foregoing acting in concert.

26 (n) "Scope criteria," as detailed in the NAIC liquidity stress test  
27 framework, are the designated exposure bases along with minimum  
28 magnitudes thereof for the specified data year; used to establish a  
29 preliminary list of insurers considered scoped into the NAIC liquidity  
30 stress test framework for such specified data year.

31 ~~(j)~~(o) "Securityholder" of a specified person means one who owns  
32 any security of such person, ~~including~~ common stock, preferred stock, debt  
33 obligations; and any other security convertible into or evidencing the right  
34 to acquire any of the foregoing.

35 ~~(k)~~(p) "Subsidiary" of a specified person means an affiliate controlled  
36 by such person, directly; or indirectly, through one or more intermediaries.

37 ~~(j)~~(q) "Voting security" means any security convertible into or  
38 evidencing a right to acquire a voting security.

39 Sec. 5. K.S.A. 40-3305 is hereby amended to read as follows: 40-  
40 3305. (a) Every insurer that is authorized to do business in this state and  
41 ~~that~~ is a member of an insurance holding company system shall register  
42 with the commissioner of insurance, except a foreign insurer subject to  
43 registration requirements and standards adopted by statute or regulation in

1 the jurisdiction of its domicile that are substantially similar to those  
2 contained in this section. Any insurer that is subject to registration under  
3 this section shall register within 15 days after it becomes subject to  
4 registration; and annually thereafter by May 1 of each year ~~unless for the~~  
5 *previous calendar year* the commissioner of insurance for good cause  
6 shown extends the time for registration, and then within such extended  
7 time. The commissioner of insurance may require any authorized insurer  
8 that is a member of an insurance holding company system and ~~that~~ is not  
9 subject to registration under this section to furnish a copy of the  
10 registration statement, the summary specified in subsection (c) or other  
11 information filed by such insurance company with the insurance regulatory  
12 authority of domiciliary jurisdiction.

13 (b) Pursuant to subsection (a), every insurer subject to registration  
14 shall file a registration statement on a form provided by the commissioner  
15 of insurance; that shall contain current information ~~about~~ *regarding*:

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

18 (2) the identity and relationship of every member of the insurance  
19 holding company system;

20 (3) the following agreements in force and transactions currently  
21 outstanding or that occurred during the last calendar year between such  
22 insurer and its affiliates:

23 (A) Loans, other investments, or purchases, sales or exchanges of  
24 securities of the affiliates by the insurer or of the insurer by its affiliates;

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

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

27 (D) guarantees or undertakings for the benefit of an affiliate that  
28 result in an actual contingent exposure of the insurer's assets to liability,  
29 other than insurance contracts entered into in the ordinary course of the  
30 insurer's business;

31 (E) all management agreements, service contracts and cost sharing  
32 arrangements;

33 (F) reinsurance agreements;

34 (G) dividends and other distributions to shareholders; and

35 (H) consolidated tax allocation agreements;

36 (4) other matters concerning transactions between registered insurers  
37 and any affiliates as may be included from time to time in any registration  
38 forms adopted or approved by the commissioner of insurance;

39 (5) any pledge of the insurer's stock, including stock of any  
40 subsidiary or controlling affiliate, for a loan made to any member of the  
41 insurance holding company system;

42 (6) financial statements of or within an insurance holding company  
43 system, including all affiliates, if requested by the commissioner of

1 insurance. Financial statements may include, but ~~are~~ *not be* limited to,  
2 annual audited financial statements filed with the U.S. securities and  
3 exchange commission ~~(, SEC)~~, pursuant to the securities act of 1933, as  
4 amended, or the securities exchange act of 1934, as amended. An insurer  
5 required to file financial statements pursuant to this paragraph may satisfy  
6 the request by providing the commissioner of insurance with the most  
7 recently filed parent corporation financial statements that have been filed  
8 with the SEC;

9 (7) statements that the insurer's board of directors and principal  
10 officers oversee corporate governance and internal controls and that the  
11 insurer's principal officers have approved, implemented and continue to  
12 maintain and monitor corporate governance and internal control  
13 procedures; and

14 (8) any other information required by the commissioner of insurance  
15 by rules and regulations.

16 (c) All registration statements shall be accompanied by a summary  
17 outlining all items in the current registration statement representing  
18 changes from the prior registration statement.

19 (d) No information need be disclosed on the registration statement  
20 filed pursuant to subsection (b) if such information is not material for the  
21 purpose of this section. Unless the commissioner of insurance by rules and  
22 regulations or order provides otherwise, sales, purchases, exchanges, loans  
23 or extensions of credit, investments or guarantees, involving 0.5% or less  
24 of an insurer's admitted assets as of the December 31 ~~immediately next~~  
25 preceding shall be deemed immaterial for purposes of this section.

26 (e) Each registered insurer shall keep current the information required  
27 to be disclosed in such insurer's registration statement by reporting all  
28 material changes or additions on amendment forms provided by the  
29 commissioner of insurance within 15 days after the end of the month in  
30 which it learns of each such change or addition, except *that* each registered  
31 insurer shall report all dividends and other distributions to shareholders  
32 within five business days following its declaration. Any such dividend or  
33 distribution shall not be paid for at least 10 business days from the  
34 commissioner's receipt of the notice of its declaration.

35 (f) Any person within an insurance holding company system subject  
36 to registration shall provide complete and accurate information to an  
37 insurer, ~~where~~ *if* such information is reasonably necessary to enable the  
38 insurer to comply with the provisions of this act.

39 (g) The commissioner ~~of insurance~~ shall terminate the registration of  
40 any insurer that demonstrates that such insurer *is* no longer ~~is~~ a member of  
41 an insurance holding company system.

42 (h) The commissioner ~~of insurance~~ may require or allow two or more  
43 affiliated insurers subject to registration hereunder to file a consolidated



1 registration statement.

2 (i) The commissioner ~~of insurance~~ may allow an insurer that is  
3 authorized to do business in this state and ~~that is~~ part of an insurance  
4 holding company system to register on behalf of any affiliated insurer that  
5 is required to register under subsection (a) and ~~to~~ file all information and  
6 material required to be filed under this section.

7 (j) The provisions of this section shall not apply to any information or  
8 transaction if and to the extent the commissioner ~~of insurance~~ by rule and  
9 regulation or order exempts the same from the provisions of this section.

10 (k) Any person may file with the commissioner ~~of insurance~~ a  
11 disclaimer of affiliation with any authorized insurer or such a disclaimer  
12 may be filed by such insurer or any member of an insurance holding  
13 company system. The disclaimer shall fully disclose all material  
14 relationships and bases for affiliation between such person and such  
15 insurer as well as the basis for disclaiming such affiliation. After a  
16 disclaimer has been filed, the insurer shall be relieved of any duty to  
17 register or report under this section ~~which that~~ may arise out of the  
18 insurer's relationship with such person unless and until the commissioner  
19 ~~of insurance~~ disallows such a disclaimer. The commissioner ~~of insurance~~  
20 shall disallow such a disclaimer only after furnishing all parties in interest  
21 with notice and opportunity to be heard in accordance with the provisions  
22 of the Kansas administrative procedure act.

23 (l) (1) Except as provided in paragraph (2), the ultimate controlling  
24 person of every insurer subject to registration also shall file an annual  
25 enterprise risk report. The report, to the best of the ultimate controlling  
26 person's knowledge and belief, shall identify the material risks within the  
27 insurance holding company system that could pose enterprise risk to the  
28 insurer. The report shall be appropriate to the nature, scale and complexity  
29 of the insurer. The report shall be filed with the lead state commissioner of  
30 insurance of the insurance holding company system as determined by the  
31 procedures within the financial analysis handbook adopted by the ~~national~~  
32 ~~association of insurance commissioners NAIC~~. The first enterprise risk  
33 report shall be filed ~~no~~ not later than May 1, ~~2015~~, and annually thereafter  
34 by ~~May 1~~ of each year unless the commissioner ~~of insurance~~ extends the  
35 time for filing for good cause shown.

36 (2) ~~The ultimate controlling person of a domestic insurer that is~~  
37 ~~authorized, admitted or eligible to engage in the business of insurance only~~  
38 ~~in this state with total direct and assumed annual premiums of less than~~  
39 ~~\$300 million is not required to submit an enterprise risk report under~~  
40 ~~paragraph (1) unless the ultimate controlling person of the domestic~~  
41 ~~insurer also controls other insurers that do not meet the requirements of~~  
42 ~~this subsection. For the purposes of this subsection, an insurer is not~~  
43 ~~considered to be authorized, admitted or eligible to engage in the business~~

1 ~~of insurance only in this state if the insurer directly or indirectly writes or~~  
2 ~~assumes insurance in any other manner in another state(A) Except as~~  
3 ~~provided hereunder, the ultimate controlling person of every insurer~~  
4 ~~subject to registration shall concurrently file with the registration an~~  
5 ~~annual group capital calculation as directed by the lead state~~  
6 ~~commissioner. The report shall be completed in accordance with the NAIC~~  
7 ~~group capital calculation instructions, which may permit the lead state~~  
8 ~~commissioner to allow a controlling person that is not the ultimate~~  
9 ~~controlling person to file the group capital calculation. The report shall be~~  
10 ~~filed with the lead state commissioner of the insurance holding company~~  
11 ~~system as determined by the commissioner of insurance in accordance~~  
12 ~~with the procedures within the financial analysis handbook. An insurance~~  
13 ~~holding company system shall be exempt from filing the group capital~~  
14 ~~calculation if:~~

15 (i) *It has only one insurer within its holding company structure, only*  
16 *writes business is only licensed in its domestic state and assumes no*  
17 *business from any other insurer;*

18 (ii) *it is required to perform a group capital calculation specified by*  
19 *the board of governors of the federal reserve system. The lead state*  
20 *commissioner shall request the calculation from the federal reserve board*  
21 *under the terms of information sharing agreements in effect. If the federal*  
22 *reserve board cannot share the calculation with the lead state*  
23 *commissioner, the insurance holding company shall not be exempt from*  
24 *the group capital calculation filing;*

25 (iii) *its non-United States group-wide supervisor is located within a*  
26 *reciprocal jurisdiction, as defined in K.S.A. 40-221a, and amendments*  
27 *thereto, that recognizes the United States regulatory approach to group*  
28 *supervision and group capital; and*

29 (iv) *it is an insurance holding company system:*

30 (a) *That provides information to the lead state that meets the*  
31 *requirements for accreditation under the NAIC financial standards and*  
32 *accreditation program, either directly or indirectly through the group-wide*  
33 *supervisor, who has determined that such information is satisfactory to*  
34 *allow the lead state to comply with the NAIC group supervision approach,*  
35 *as detailed in the NAIC financial analysis handbook; and*

36 (b) *whose non-United States group-wide supervisor who is not in a*  
37 *reciprocal jurisdiction recognizes and accepts, as specified by the*  
38 *commissioner in rules and regulations, the group capital calculation as*  
39 *the worldwide group capital assessment for United States insurance*  
40 *groups that operate in that jurisdiction.*

41 (B) *Notwithstanding the provisions of K.S.A. 40-3305, and*  
42 *amendments thereto, a lead state commissioner shall require the group*  
43 *capital calculation for the United States operations of any non-United*

1 *States based insurance holding company system if, after any necessary*  
2 *consultation with other supervisors or officials, it is deemed appropriate*  
3 *by the lead state commissioner for prudential oversight and solvency*  
4 *monitoring purposes or for ensuring the competitiveness of the insurance*  
5 *marketplace.*

6 *(C) Notwithstanding the exemptions from filing the group capital*  
7 *calculation stated in K.S.A. 40-3305, and amendments thereto, the lead*  
8 *state commissioner has the discretion to exempt the ultimate controlling*  
9 *person from filing the annual group capital calculation or to accept a*  
10 *limited group capital filing or report in accordance with criteria specified*  
11 *by the commissioner in regulation.*

12 *(D) If the lead state commissioner determines that an insurance*  
13 *holding company system no longer meets one or more of the requirements*  
14 *for an exemption from filing the group capital calculation under this*  
15 *section, the insurance holding company system shall file the group capital*  
16 *calculation at the next annual filing date unless given an extension by the*  
17 *lead state commissioner based on reasonable grounds shown.*

18 *(E) The ultimate controlling person of every insurer subject to*  
19 *registration and also scoped into the NAIC liquidity stress test framework*  
20 *shall file the results of a specific year's liquidity stress test. The filing shall*  
21 *be made to the lead state insurance commissioner of the insurance holding*  
22 *company system as determined by the procedures within the financial*  
23 *analysis handbook and that:*

24 *(i) The NAIC liquidity stress test framework includes scope criteria*  
25 *applicable to a specific data year. These scope criteria are reviewed at*  
26 *least annually by the financial stability task force or its successor. Any*  
27 *change to the NAIC liquidity stress test framework or to the data year for*  
28 *which the scope criteria are to be measured shall be effective on January*  
29 *1 of the year following the calendar year in which such changes are*  
30 *adopted. Insurers meeting at least one threshold of the scope criteria are*  
31 *considered scoped into the NAIC liquidity stress test framework for the*  
32 *specified data year, unless the lead state insurance commissioner, in*  
33 *consultation with the NAIC financial stability task force or its successor,*  
34 *determines that such insurer should not be scoped into the framework for*  
35 *that data year. Similarly, insurers that do not trigger at least one threshold*  
36 *of the scope criteria are considered scoped out of the NAIC liquidity stress*  
37 *test framework for the specified data year, unless the lead state insurance*  
38 *commissioner, in consultation with the NAIC financial stability task force*  
39 *or its successor, determines that the insurer should be scoped into the*  
40 *framework for that data year.*

41 *(ii) The lead state insurance commissioner, in consultation with the*  
42 *financial stability task force or its successor, shall assess the concerns of*  
43 *regulators that wish to avoid having insurers scoped in and out of the*

1 *NAIC liquidity stress test framework on a frequent basis as part of the*  
2 *determination for an insurer.*

3 *(F) The performance and filing of the results of a specific year's*  
4 *liquidity stress test shall comply with the NAIC liquidity stress test*  
5 *framework instructions and reporting templates for that year and any lead*  
6 *state insurance commissioner determinations, in consultation with the*  
7 *financial stability task force or its successor, provided within the*  
8 *framework.*

9 (m) The failure of an insurer or an ultimate controlling person of the  
10 insurer to file a registration statement, any summary of the registration  
11 statement or enterprise risk filing within the specified time for filing shall  
12 be a violation by the insurer or by the ultimate controlling person of the  
13 insurer, as applicable.

14 Sec. 6. K.S.A. 40-3306 is hereby amended to read as follows: 40-  
15 3306. (a) ~~Material~~ Transactions by registered insurers with their affiliates  
16 shall be subject to the following standards:

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

18 (2) agreements for cost-sharing services and management shall  
19 include such provisions as required by rules and regulations adopted by the  
20 commissioner of insurance;

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

22 (4) expenses incurred and payment received with respect to such  
23 transactions shall be allocated to the insurer in conformity with the  
24 requirements of K.S.A. 40-225, and amendments thereto;

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

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

34 (b) (1) *If an insurer subject to this act is deemed by the commissioner*  
35 *of insurance to be in a hazardous financial condition as defined by K.S.A.*  
36 *40-222d, and amendments thereto, or a condition that would be grounds*  
37 *for supervision, conservation or a delinquency proceeding, then the*  
38 *commissioner may require the insurer to secure and maintain either a*  
39 *deposit, held by the commissioner, or a bond, as determined by the insurer*  
40 *at the insurer's discretion, for the protection of the insurer for the duration*  
41 *of the contract or agreement or the existence of the condition for which the*  
42 *commissioner required the deposit or the bond.*

43 (2) *In determining whether a deposit or a bond is required, the*

1 commissioner shall consider whether concerns exist with respect to the  
2 affiliated person's ability to fulfill the contract or agreement if the insurer  
3 were to be put into liquidation. Once the insurer is deemed to be in a  
4 hazardous financial condition or a condition that would be grounds for  
5 supervision, conservation or a delinquency proceeding and a deposit or  
6 bond is necessary, the commissioner shall have the discretion to  
7 determine the amount of the deposit or bond, not to exceed the value of the  
8 contract or agreement in any one year, and whether such deposit or bond  
9 should be required for a single contract, multiple contracts or a contract  
10 only with a specific person;

11 (c) All records and data of the insurer held by an affiliate are and  
12 shall remain the property of the insurer; are subject to control of the  
13 insurer; are identifiable and are segregated or readily capable of  
14 segregation, at no additional cost to the insurer from all other persons'  
15 records and data. All records and data that are otherwise the property of  
16 the insurer, in whatever form maintained, including, but not limited to,  
17 claims and claim files, policyholder lists, application files, litigation files,  
18 premium records, rate books, underwriting manuals, personnel records,  
19 financial records or similar records within the possession, custody or  
20 control of the affiliate shall remain the property of the insurer. At the  
21 request of the insurer, the affiliate shall provide that the receiver may  
22 obtain a complete set of all records of any type that pertain to the insurer's  
23 business, obtain access to the operating systems upon which the data is  
24 maintained, obtain the software that runs those systems either through  
25 assumption of licensing agreements or otherwise and restrict the use of the  
26 data by the affiliate if it is not operating the insurer's business. The  
27 affiliate shall provide a waiver of any landlord lien or other encumbrance  
28 to provide the insurer with access to all records and data in the event of  
29 the affiliate's default under a lease or other agreement; and

30 (d) Premiums or other funds belonging to the insurer that are  
31 collected or held by an affiliate shall be deemed the exclusive property of  
32 and subject to the control of such insurer. Any right of offset in the event  
33 that an insurer is placed into receivership shall be subject to K.S.A. 40-  
34 3605 et seq., and amendments thereto.

35 (b)(e) The following transactions involving a domestic insurer and  
36 any person in such insurer's insurance holding company system, including  
37 amendments or modifications of affiliate agreements previously filed  
38 pursuant to this section, may not be entered into unless the insurer has  
39 notified the commissioner of insurance in writing of such insurer's  
40 intention to enter into such transaction at least 30 days prior thereto, or  
41 such shorter period as the commissioner of insurance may permit, and the  
42 commissioner of insurance has not disapproved such transaction within  
43 such period.

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

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

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

8 (2) Loans or extensions of credit to any person who is not an affiliate,  
 9 ~~where~~ if the insurer makes such loans or extensions of credit with the  
 10 agreement or understanding that the proceeds of such transactions, in  
 11 whole or in substantial part, are to be used to make loans or extensions of  
 12 credit to, purchase assets of, or make investments in, any affiliate of the  
 13 insurer making such loans or extensions of credit—~~provided~~ if such  
 14 transactions are equal to or exceed:

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

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

19 (3) Reinsurance agreements or modifications thereto, including:

20 (A) All reinsurance pooling agreements; and

21 (B) agreements in which the reinsurance premium or a change in the  
 22 insurer's liabilities, or the projected reinsurance premium or a projected  
 23 change in the insurer's liabilities in any of the next three consecutive years  
 24 equals or exceeds 5% of the insurer's surplus as regards policyholders, as  
 25 of December 31 immediately preceding, including those agreements—~~which~~  
 26 *that* may require as consideration the transfer of assets from an insurer to a  
 27 nonaffiliate, if an agreement or understanding exists between the insurer  
 28 and nonaffiliate that any portion of such assets will be transferred to one or  
 29 more affiliates of the insurer;

30 (4) all management agreements, service contracts, tax allocation  
 31 agreements and all cost-sharing arrangements; and

32 (5) any—~~material~~ transactions, specified by rules and regulations,  
 33 ~~which~~ *that* the commissioner of insurance determines may adversely affect  
 34 the interests of an insurer's policyholders.

35 Nothing—~~herein~~ contained *in this subsection* shall be deemed to  
 36 authorize or permit any transactions—~~which~~, *that* in the case of an insurer  
 37 not a member of the same insurance holding company system, would be  
 38 otherwise contrary to law.

39 (e)(f) A domestic insurer—~~may~~ *shall* not enter into transactions—~~which~~  
 40 *that* are part of a plan or series of like transactions with persons within the  
 41 insurance holding company system if the purpose of those separate  
 42 transactions is to avoid the threshold amount required under this section  
 43 and thus avoid the review that would occur otherwise. If the commissioner

1 of insurance determines that such separate transactions were entered into  
2 over any 12-month period for such purpose, the commissioner of insurance  
3 may exercise authority under K.S.A. 40-3311, and amendments thereto.

4 ~~(d)~~(g) The commissioner of insurance, in reviewing transactions  
5 pursuant to subsection ~~(b)~~(e), shall consider whether the transactions  
6 comply with the standards set forth in subsection (a), and whether such  
7 transactions may adversely affect the interests of policyholders.

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

12 ~~(f)~~(i) A transaction subject to approval by the commissioner of  
13 insurance pursuant to K.S.A. 40-3304, and amendments thereto, shall not  
14 be subject to the requirements of this section.

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

18 (A) 30 days after the commissioner of insurance has received notice  
19 of the declaration thereof and has not within such period disapproved such  
20 payment; or

21 (B) the commissioner of insurance has approved such payment within  
22 such 30-day period.

23 (2) (A) For purposes of this section, an extraordinary dividend or  
24 distribution includes any dividend or distribution of cash or other property,  
25 the fair market value of which, together with that of other dividends or  
26 distributions made within the preceding 12 months, exceeds the greater of:

27 (i) 10% of such insurer's surplus as regards policyholders as of  
28 December 31-immediately preceding; or

29 (ii) the net gain from operations of such insurer, if such insurer is a  
30 life insurer, or the net income, if such insurer is not a life insurer, not  
31 including realized capital gains for the 12-month period ending December  
32 31-immediately next preceding, but shall not include pro rata distributions  
33 of any class of the insurer's own securities.

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

41 (C) An extraordinary dividend or distribution shall also include any  
42 dividend or distribution made or paid out of any funds other than earned  
43 surplus arising from the insurer's business, as defined in K.S.A. 40-233,

1 and amendments thereto. The provisions of K.S.A. 40-233, and  
2 amendments thereto, shall not be construed so as to prohibit an insurer,  
3 subject to registration under K.S.A. 40-3305, and amendments thereto,  
4 from making or paying an extraordinary dividend or distribution in  
5 accordance with this section.

6 (3) Notwithstanding any other provisions of law, an insurer may  
7 declare an extraordinary dividend or distribution ~~which~~ *that* is conditional  
8 upon the approval of the commissioner of insurance. No declaration shall  
9 confer any rights upon shareholders until:

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

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

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

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

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

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

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

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

33 (4) the extent of the geographical dispersion of the insurer's insured  
34 risks;

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

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

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

40 (8) the surplus as regards policyholders maintained by other  
41 comparable insurers;

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

43 (10) the quality and liquidity of investments in affiliates. The



1 commissioner of insurance may treat any such investment as a disallowed  
2 asset for purposes of determining the adequacy of surplus as regards  
3 policyholders whenever in the judgment of the commissioner of insurance  
4 such investment so warrants; and

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

7 Sec. 7. K.S.A. 40-3307 is hereby amended to read as follows: 40-  
8 3307. (a) Subject to the limitation contained in this section and in addition  
9 to the powers ~~which~~ *that* the commissioner of insurance has under K.S.A.  
10 40-222 and K.S.A. 40-222a, and amendments thereto, relating to the  
11 examination of insurers, the commissioner of insurance shall have the  
12 power to examine any insurer registered under K.S.A. 40-3305, and  
13 amendments thereto, and such insurer's affiliates to ascertain the financial  
14 condition, ~~including enterprise risk~~, of such insurer *including the*  
15 *enterprise risk to the insurer by the ultimate controlling party or by any*  
16 *entity or combination of entities within the insurance holding company*  
17 *system or by the insurance holding company system on a consolidated*  
18 *basis.*

19 (b) (1) The commissioner of insurance may order any insurer  
20 registered under K.S.A. 40-3305, and amendments thereto, to produce  
21 such records, books or other information in the possession of the insurer or  
22 its affiliates as are reasonably necessary to determine compliance with this  
23 act.

24 (2) To determine compliance with this act, the commissioner of  
25 insurance may order any insurer registered under K.S.A. 40-3305, and  
26 amendments thereto, to produce information not in the possession of the  
27 insurer, if the insurer can obtain access to such information pursuant to  
28 contractual relationships, statutory obligations or another method. In the  
29 event *that* the insurer cannot obtain the information requested by the  
30 commissioner of insurance, the insurer shall provide the commissioner of  
31 insurance a detailed explanation of the reason that the insurer cannot  
32 obtain the information and the identity of the holder of information.  
33 Whenever it appears to the commissioner of insurance that the detailed  
34 explanation is without merit, the commissioner of insurance may require,  
35 after notice and hearing, the insurer to pay a penalty of not more than  
36 \$1,000 for each day's delay; or may suspend or revoke the license of the  
37 insurer.

38 (c) The commissioner of insurance may retain at the registered  
39 insurer's expense such attorneys, actuaries, accountants and other experts  
40 not otherwise a part of the staff of the commissioner of insurance as the  
41 commissioner of insurance shall determine to be reasonably necessary to  
42 assist in the conduct of the examination under subsection (a). Any persons  
43 so retained shall be under the direction and control of the commissioner of

1 insurance and shall act in a purely advisory capacity.

2 (d) Each registered insurer producing examination records, books and  
3 papers pursuant to subsection (a) shall be liable for and shall pay the  
4 expense of such examination in accordance with K.S.A. 40-223 and  
5 ~~K.S.A.~~ 40-253, and amendments thereto.

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

21 Sec. 8. K.S.A. 40-3308 is hereby amended to read as follows: 40-  
22 3308. (a) Documents, materials or other information obtained by or  
23 disclosed to the commissioner of insurance or any other person in the  
24 course of an examination or investigation made pursuant to K.S.A. 40-  
25 3307, and amendments thereto, and all information reported pursuant to  
26 K.S.A. 40-3304, 40-3305 and 40-3306, and amendments thereto, shall:

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

33 (b) (1) The commissioner of insurance shall not otherwise make the  
34 documents, materials or other information public without the prior written  
35 consent of the insurer to which it pertains unless the commissioner of  
36 insurance, after giving the insurer and its affiliates who would be affected  
37 thereby notice and opportunity to be heard in accordance with the  
38 provisions of the Kansas administrative procedure act, determines that the  
39 interests of policyholders, shareholders or the public would be served by  
40 the publication thereof, in which event, the commissioner of insurance  
41 may publish all or any part thereof in such a manner as the commissioner  
42 of insurance may deem appropriate. In making such determination, the  
43 commissioner of insurance also shall take into consideration any potential

1 adverse consequences of the disclosure thereof.

2 (2) *For purposes of the information reported and provided to the*  
3 *commissioner pursuant to K.S.A. 40-3304 through 40-3307, and*  
4 *amendments thereto, the commissioner shall maintain the confidentiality*  
5 *of the:*

6 (A) *Group capital calculation and group capital ratio produced*  
7 *within the calculation and any group capital information received from an*  
8 *insurance holding company supervised by the federal reserve board or any*  
9 *United States group-wide supervisor; and*

10 (B) *liquidity stress test results and supporting disclosures and any*  
11 *liquidity stress test information received from an insurance holding*  
12 *company supervised by the federal reserve board and non-United States*  
13 *group-wide supervisors.*

14 (c) Neither the commissioner of insurance nor any person who  
15 received documents, materials or other information while acting under the  
16 authority of the commissioner of insurance or with whom such documents,  
17 materials or other information are shared pursuant to this section shall be  
18 permitted or required to testify in any private civil action concerning any  
19 confidential documents, materials or information subject to subsection (a).

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

22 (1) May share documents, materials or other information, including  
23 the confidential and privileged documents, materials or information  
24 subject to subsection (a), with other state, federal and international  
25 regulatory agencies,—with the national association of insurance  
26 commissioners and its affiliates and subsidiaries, and—with state, federal  
27 and international law enforcement authorities, including members of any  
28 supervisory college described in K.S.A. 40-3316, and amendments thereto,  
29 provided that the recipient agrees in writing to maintain the confidentiality  
30 and privileged status of the document, material or other information, and  
31 has verified in writing the legal authority to maintain confidentiality;

32 (2) notwithstanding the provisions of paragraph (1)—~~above~~, the  
33 commissioner of insurance may only share confidential and privileged  
34 documents, material or information reported pursuant to subsection (1) of  
35 K.S.A. 40-3305, and amendments thereto, with the commissioner of  
36 insurance or corresponding official of any state having statutes or  
37 regulations substantially similar to subsections (a)—~~and~~, (b) *and* (c), and  
38 who has agreed in writing ~~not~~ to *not* disclose such information;

39 (3) may receive documents, materials or information, including  
40 otherwise confidential and privileged documents, materials or information  
41 from the national association of insurance commissioners, and its affiliates  
42 and subsidiaries, and from regulatory and law enforcement officials of  
43 other foreign or domestic jurisdictions, and shall maintain as confidential

1 or privileged any document, material or information received with notice  
2 or the understanding that it is confidential or privileged under the laws of  
3 the jurisdiction that is the source of the document, material or information.  
4 Documents received pursuant to this section shall not be subject to  
5 disclosure pursuant to the open records act, K.S.A. 45-215 et seq., and  
6 amendments thereto; and

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

10 (i) Specify procedures and protocols regarding the confidentiality and  
11 security of information shared with the national association of insurance  
12 commissioners and its affiliates and subsidiaries pursuant to this act,  
13 including procedures and protocols for sharing by the national association  
14 of insurance commissioners with other state, federal or international  
15 regulators;

16 (ii) specify that ownership of information shared with the national  
17 association of insurance commissioners and its affiliates and subsidiaries  
18 pursuant to this act remains with the commissioner of insurance; and *that*  
19 ~~the national association of insurance commissioners'~~ NAIC's use of the  
20 information is subject to the direction of the commissioner of insurance;

21 (iii) *exclude documents, material or information reported pursuant to*  
22 *K.S.A. 40-3305, and amendments thereto, and prohibit the NAIC and its*  
23 *affiliates and subsidiaries from storing the information shared pursuant to*  
24 *the insurance holding company act in a permanent database after the*  
25 *underlying analysis is completed;*

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

31 ~~(iv)(v)~~ require the ~~national association of insurance commissioners~~  
32 NAIC and its affiliates and subsidiaries to consent to intervention by an  
33 insurer in any judicial or administrative action in which the ~~national~~  
34 ~~association of insurance commissioners~~ NAIC and its affiliates and  
35 subsidiaries may be required to disclose confidential information about the  
36 insurer and its affiliates *that are* shared with the ~~national association of~~  
37 ~~insurance commissioners~~ NAIC and its affiliates and subsidiaries pursuant  
38 ~~to this the insurance holding company act; and~~

39 (vi) *for documents, material or information reporting pursuant to*  
40 *K.S.A. 40-3305, and amendments thereto, in the case of an agreement*  
41 *involving a third-party consultant, provide for notification of the identity*  
42 *of the consultant to the applicable insurers.*

43 (e) The sharing of information by the commissioner of insurance,

1 pursuant to this act, shall not constitute a delegation of regulatory authority  
2 or ~~rule-making~~ *rulemaking* authority, and the commissioner of insurance is  
3 solely responsible for the administration, execution and enforcement of the  
4 provisions of this act.

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

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

15 (h) *(1) The group capital calculation and resulting group capital*  
16 *ratio required under K.S.A. 40-3305, and amendments thereto, and the*  
17 *liquidity stress test along with its results and supporting disclosures*  
18 *required under K.S.A. 40-3305, and amendments thereto, shall be deemed*  
19 *regulatory tools for assessing group risks and capital adequacy and group*  
20 *liquidity risks, respectively, and shall not be construed as a means to rank*  
21 *insurers or insurance holding company systems.*

22 *(2) Except as otherwise may be required under the provisions of the*  
23 *insurance holding company act, the making, publishing, disseminating,*  
24 *circulating, placing before the public or causing directly or indirectly to*  
25 *be made, published, disseminated, circulated or placed before the public*  
26 *in a newspaper, magazine or other publication, in the form of a notice,*  
27 *circular, pamphlet, letter or poster, broadcast by any radio or television*  
28 *station or by any electronic means of communication available to the*  
29 *public, or in any other way as an advertisement, announcement or*  
30 *statement containing a representation or statement with regard to the*  
31 *group capital calculation, group capital ratio, the liquidity stress test*  
32 *results, or supporting disclosures for the liquidity stress test of any insurer*  
33 *or any insurer group, or of any component derived in the calculation by*  
34 *any insurer, broker, or other person engaged in any manner in the*  
35 *insurance business could be misleading and is therefore prohibited.*

36 *(3) If any materially false statement with respect to the group capital*  
37 *calculation, resulting group capital ratio, an inappropriate comparison of*  
38 *any amount to an insurer's or insurance group's group capital calculation*  
39 *or resulting group capital ratio, liquidity stress test result, supporting*  
40 *disclosures for the liquidity stress test or an inappropriate comparison of*  
41 *any amount to an insurer's or insurance group's liquidity stress test result*  
42 *or supporting disclosures is published in any written publication and the*  
43 *insurer is able to demonstrate to the commissioner with substantial proof*

1 *the falsity or inappropriateness of such statement, then the insurer may*  
2 *publish announcements in a written publication if the sole purpose of the*  
3 *announcement is to rebut the materially false statement.*

4 (i) The provisions of this section shall not be subject to the provisions  
5 of K.S.A. 45-229, and amendments thereto.

6 Sec. 9. K.S.A. 40-249, 40-2c29, 40-2d01, 40-3302, 40-3305, 40-  
7 3306, 40-3307 and 40-3308 and K.S.A. 2024 Supp. 40-2c01 are hereby  
8 repealed.

9 Sec. 10. This act shall take effect and be in force from and after its  
10 publication in the statute book.