

Journal of the Senate

FORTY-SIXTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, March 16, 2012, 8:00 a.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-six senators present.
Senators Brungardt, Kelsey, Love and Steineger were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Even though we complain about the intense schedule, the unjust criticism, and the frustrations. I doubt there are any of us who don't experience a touch of awe as we view this imposing edifice from ninth street.

There is so much history here, Lord. While we assemble day after day, every once in a while we may seem to hear the echoes of debates reaching back into the nineteenth century. And we might even sense the presence of outstanding Senators of the past who have sat where we sit and stood where we stand.

Over the years there have been at least thirty-one who have gone on to Congress. Three of them are serving there today. Fifteen of our forty-one governors once served in this chamber. It is entirely possible that future Congressmen and Congresswomen are standing here as we pray.

And now we are in the process of restoring the State House, as much as possible, to its original appearance. (Pardon me, Lord, as I share my hope that restoration to its original appearance doesn't apply to the restrooms!)

Never let us, O God, lose the sense of history that permeates this place.

I pray in the Name of Jesus Christ, AMEN

The Pledge of Allegiance was led by President Stephen Morris.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Transportation: **HB 2431, HB 2749, HB 2757.**

Ways and Means: **HB 2755.**

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Emler, Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala,

Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. **1837**—

A RESOLUTION congratulating and commending the Kansas State Firefighter's Association on their 125th anniversary.

WHEREAS, On August 13, 1887, a group of Kansas fire service leaders met at Minneapolis, Kansas and organized the Kansas State Firemen's Association for the benefit of present and future Kansas firefighters; and

WHEREAS, The Kansas State Firemen's Association eventually changed its name to the Kansas State Firefighter's Association; and

WHEREAS, The Kansas State Firefighter's Association represents 16,000 firefighters, both volunteer and paid, from 660 fire departments across the state; and

WHEREAS, The primary goal of the Kansas State Firefighter's Association is to be dedicated to the safety and education of Kansas firefighters; and

WHEREAS, To provide for the safety of Kansas firefighters, the Kansas State Firefighter's Association provides free training to nearly 1,000 Kansas firefighters each year; and

WHEREAS, Kansas firefighters and their families make significant sacrifices to ensure the protection of Kansas lives and property; and

WHEREAS, The Kansas State Firefighter's Association has enjoyed a rich and proud heritage, and is the preeminent fire service organization in the state of Kansas: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Kansas State Firefighter's Association and its members be congratulated and commended on the 125th Anniversary of their organization; and

Be it further resolved: That the 13th day of August of 2012 be recognized as Kansas Firefighter Day in honor of the sacrifices made by Kansas firefighters and their families over the past 125 years; and

Be it further resolved: That the Secretary of the Senate shall send five enrolled copies of this resolution to Senator Emler.

On emergency motion of Senator Emler **SR 1837** was adopted unanimously.

Senator Emler congratulated and commended the Kansas State Firefighter's Association on their 125th anniversary. The following Firefighters introduced were John Paulson, his wife Lisa, Steve Hirsch, J.L. Ellis, Shane Pearson, Justin Couse, Ron Ewing and Doug Janssen. The Senate acknowledged them with a standing ovation.

On emergency motion of Senator Emler **SR 1837** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **HB 2117** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL NO. 2117," as follows:

"SENATE Substitute for HOUSE BILL NO. 2117
By Committee on Assessment and Taxation

"AN ACT concerning taxation; relating to income tax, rate for individuals, credits, deductions and income determination; sales tax rate and distribution of revenue; severance tax, exemptions; homestead property tax refunds; food sales tax refund; amending K.S.A. 39-7,132, 65-7107, 74-8206, 74-8304, 79-32,118, 79-32,128, 79-32,177, 79-32,190 and 79-32,200 and K.S.A. 2011 Supp. 40-2246, 74-50,173, 74-50,208, 74-8316, 74-8401, 79-32,110, 79-32,111, 79-32,117, 79-32,119, 79-32,138, 79-32,143, 79-32,143a, 79-32,182b, 79-32,201, 79-32,204, 79-32,207, 79-32,210, 79-32,212, 79-32,222, 79-32,266, 79-3603, 79-3620, 79-3703, 79-3710, 79-4217, 79-4501, 79-4502, 79-4508, 79-4509, 79-4511 and 79-4522 and repealing the existing sections; also repealing K.S.A. 79-32,176 and 79-32,182 and K.S.A. 2011 Supp. 79-32,111a, 79-32,120, 79-32,202, 79-32,213, 79-32,242, 79-3633, 79-3634, 79-3635, 79-3636, 79-3637, 79-3638 and 79-3639.

And the substitute bill be passed.

On motion of Senator Emler the Senate recessed until the sound of the gavel.

The Senate met pursuant to recess with Vice President John Vratil in the chair.

REPORT ON ENROLLED BILLS

SB 249, SB 264, SB 266, SB 270, SB 374, SB 384, SB 406 reported correctly enrolled properly signed and presented to the Governor on March 16, 2012.

SR 1833, SR 1834, SR 1835, SR 1836 reported correctly enrolled properly signed and presented to the Secretary of the Senate on March 16, 2012.

REPORT OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **HB 2769** be passed.

Committee on **Education** recommends **HB 2200**, as amended by House Committee of the Whole, be amended by substituting a new bill to be designated as "Senate Substitute for HOUSE BILL NO. 2200," as follows:

"SENATE Substitute for HOUSE BILL NO. 2200
By Committee on Education

"AN ACT concerning school districts; relating to the amount of base state aid per pupil; relating to the local option budget; amending K.S.A. 2011 Supp. 72-6410 and 72-6433 and repealing the existing sections.";

And the substitute bill be passed.

Committee on **Federal and State Affairs** recommends **SB 356** be amended on page 1, following line 5, by inserting:

"New Section 1. The owner of a home-owned amusement ride shall acquire and maintain a general liability insurance policy, and shall annually submit proof of such

insurance to the secretary in such form and manner as prescribed by the secretary. The owner of the home-owned amusement ride shall make such proof of insurance available for inspection upon request.";

Also on page 1, in line 26, by striking "or"; in line 30, after "devices" by inserting "; or

(D) home-owned amusement rides";

On page 2, in line 4, after "(d)" by inserting ""Home-owned amusement ride" means an amusement ride owned by a not-for-profit entity and operated:

- (1) Solely within a single county;
 - (2) by individuals on a volunteer basis; and
 - (3) for a period not to exceed 12 days within one calendar year.
- (e)";

And by redesignating subsections accordingly;

On page 3, in line 13, following "44-1612," by inserting "and section 1, "; following line 15, by inserting the following:

"Sec. 4. K.S.A. 2011 Supp. 44-1614 is hereby amended to read as follows: 44-1614. The secretary of labor shall adopt rules and regulations necessary to implement provisions of the Kansas amusement ride act, K.S.A. 2011 Supp. 44-1601 through ~~44-1612~~ 44-1613 and section 1, and amendments thereto, ~~and K.S.A. 2011 Supp. 44-1613, and amendments thereto. Nothing herein shall be construed to authorize the secretary of labor to adopt rules and regulations regulating amusement rides exempted from the Kansas amusement ride act. Such rules and regulations shall be adopted on or before July 1, 2010.~~";

And by renumbering sections accordingly;

Also on page 3, in line 16, by striking "and" and inserting a comma; also in line 16, after "44-1613" by inserting "and 44-1614";

On page 1, in the title, in line 2, by striking "and" and inserting a comma; in line 3, after "1613" by inserting "and 44-1614"; and the bill be passed as amended.

Also, **SB 400** be amended on page 1, in line 15, by striking all after "if"; by striking all in lines 16 through 19; in line 20, by striking "issued"; in line 21, by striking "occurred on" and inserting "been issued for"; also in line 21, after the period by inserting "If the citation is issued for a violation of an ordinance or resolution related to the occupancy of the property, then such list shall not be required to be provided until at least 10 days following the date of the issuance of the citation. For any citation issued for a violation of an ordinance or resolution that is not related to the occupancy of the property,"; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HB 2077**, as amended by Senate Committee, be amended on page 2, by striking all in lines 34 through 43;

By striking all on pages 3 and 4;

On page 5, by striking all in lines 1 through 11 and inserting the following:

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

(b) The powers of the commissioner of insurance with respect to supervisory

colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college;
- (2) clarifying the membership and participation of other supervisors in the supervisory college;
- (3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities and processes for information sharing;
- (5) establishing a crisis management plan; and
- (6) establishing a regular assessment to the insurer for the payment of expenses incurred pursuant to subsection (c).

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

(d) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with K.S.A. 40-3307, and amendments thereto, the commissioner of insurance may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner of insurance may enter into agreements in accordance with K.S.A. 40-3308, and amendments thereto, providing the basis for cooperation between the commissioner of insurance and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner of insurance to regulate or supervise the insurer or its affiliates within the jurisdiction of the supervisory college.

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

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

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

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

(c) "Control" including the terms "controlling," "controlled by" and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management ~~and or~~ policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other

person. This presumption may be rebutted by a showing made in the manner provided by subsection (k) of K.S.A. 40-3305, and amendments thereto, that control does not exist in fact. The commissioner of insurance may determine, after a hearing in accordance with the provisions of the Kansas administrative procedure act, that control exists in fact, notwithstanding the absence of a presumption to that effect.

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

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

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

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

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

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

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

Sec. 4. K.S.A. 40-3304 is hereby amended to read as follows: 40-3304. (a) (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-

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

(2) For the purposes of this section:

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

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

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

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

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

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

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

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

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

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

(6) the amount of each class of any security referred to in subsection (a) of this section which is beneficially owned or concerning which there is a right to acquire

beneficial ownership by each acquiring party;

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

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

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

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

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

(12) an agreement by the person required to file the statement referred to in subsection (a) that it will provide the annual report, specified in subsection (l) of K.S.A. 40-3305, and amendments thereto, for so long as control exists;

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

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

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

If any material change occurs in the facts set forth in the statement filed with the

commissioner of insurance and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner of insurance and sent to such insurer within two business days after the person learns of such change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The courts of this state are hereby vested with jurisdiction over every security holder of a domestic insurer and every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner of insurance under this section and over all actions involving such person arising out of violations of this section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner of insurance to be such person's true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner of insurance and transmitted by registered or certified mail by the commissioner of insurance to such person at such person's last known address.

Sec. 5. K.S.A. 40-3305 is hereby amended to read as follows: 40-3305. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner of insurance, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this

section shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year unless the commissioner of insurance for good cause shown extends the time for registration, and then within such extended time. The commissioner of insurance may require any authorized insurer which is a member of ~~a~~ an insurance holding company system and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (c) or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

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

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

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

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

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

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

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

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

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

(F) reinsurance agreements;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements.

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

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

(6) if requested by the commissioner of insurance, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the securities act of 1933, as amended, or the securities exchange act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner of insurance with the most recently filed parent corporation financial statements that have been filed with the SEC;

(7) statements that the insurer's board of directors and principal officers oversee corporate governance and internal controls and that the insurer's principal officers have

approved, implemented and continue to maintain and monitor corporate governance and internal control procedures; and

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

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

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purpose of this section. Unless the commissioner of insurance by rules and regulations or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees, involving .5% or less of an insurer's admitted assets as of the December 31 next preceding shall ~~not~~ be deemed ~~material~~ immaterial for purposes of this section.

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

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

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

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

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

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

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

administrative procedure act.

(l) The ultimate controlling person of every insurer subject to registration also shall file an annual enterprise risk report. The report, to the best of the ultimate controlling person's knowledge and belief, shall identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of insurance of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners. The first enterprise risk report shall be filed no later than May 1, 2014, and annually thereafter by May 1 of each year unless the commissioner of insurance for good cause shown extends the time for filing.

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

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

(1) The terms shall be fair and reasonable;

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

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

~~(3)(4)~~ expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied with respect to such transactions shall be allocated to the insurer in conformity with the requirements of K.S.A. 40-225, and amendments thereto;

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

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

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

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

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

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

(2) Loans or extensions of credit to any person who is not an affiliate, where the

insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

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

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

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

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

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

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

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

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

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

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

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

~~(f)(g)~~ (1) No insurer subject to registration under K.S.A. 40-3305, and amendments thereto, ~~shall~~ may pay any extraordinary dividend or make any other extraordinary

distribution to such insurer's shareholders until:

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

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

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

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

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

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

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

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

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

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

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

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

~~(h)(i)~~ (1) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be

considered:

- (1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) the extent to which the insurer's business is diversified among the several lines of insurance;
- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical dispersion of the insurer's insured risks;
- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification, and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size and performance of the insurer's surplus as regards policyholders;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves;
- (10) the quality and liquidity of investments in affiliates. The commissioner of insurance may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants; and
- (11) the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

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

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

(2) To determine compliance with this act, the commissioner of insurance may order any insurer registered under K.S.A. 40-3305, and amendments thereto, to produce information not in the possession of the insurer, if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations or another method. In the event the insurer cannot obtain the information requested by the commissioner of insurance, the insurer shall provide the commissioner of insurance a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner of insurance that the detailed explanation is without merit, the commissioner of insurance

may require, after notice and hearing, the insurer to pay a penalty of not more than \$1,000 for each day's delay, or may suspend or revoke the license of the insurer.

(c) The commissioner of insurance may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as ~~shall the commissioner of insurance shall determine to be~~ reasonably necessary to assist in the conduct of the examination under subsection (a) ~~of this section~~. Any persons so retained shall be under the direction and control of the commissioner of insurance and shall act in a purely advisory capacity.

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

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

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

(a) Documents, materials or other information obtained by or disclosed to the commissioner of insurance or any other person in the course of an examination or investigation made pursuant to K.S.A. 40-3307, and amendments thereto, and all information reported pursuant to subsections (b)(12) and (13) of K.S.A. 40-3304, 40-3305 and 40-3306, and amendments thereto, shall:

- (1) Be confidential and privileged;
- (2) not be subject to disclosure under the Kansas open records act, K.S.A. 45-215

et seq., and amendments thereto;

(3) not be subject to subpoena; and

(4) not be subject to discovery or admissible in evidence in any private civil action.

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

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

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

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

(2) notwithstanding the provisions of paragraph (1) above, the commissioner of insurance may only share confidential and privileged documents, material or information reported pursuant to subsection (1) of K.S.A. 40-3305, and amendments thereto, with the commissioner of insurance of states having statutes or regulations substantially similar to subsections (a) and (b), and who have agreed in writing not to disclose such information;

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

(4) shall enter into written agreements with the national association of insurance commissioners governing sharing and use of information provided pursuant to this act

consistent with this subsection that shall:

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

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

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

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

(e) The sharing of information by the commissioner of insurance, pursuant to this act, shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner of insurance is solely responsible for the administration, execution and enforcement of the provisions of this act.

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

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

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

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

Sec. 10. K.S.A. 40-3310 is hereby amended to read as follows: 40-3310. (a) Whenever it appears to the commissioner of insurance that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this act or of any rule, regulation, or order issued by the commissioner of insurance

hereunder, the commissioner of insurance may apply to the district court in and for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court of Shawnee county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this act or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this act ~~or of~~ any rules and regulations or order issued by the commissioner of insurance hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding. However, no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner of insurance has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this act or of any rule, regulation or order issued by the commissioner of insurance hereunder the insurer or the commissioner of insurance may apply to the district court of Shawnee county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of K.S.A. 40-3304, and amendments thereto, or any rules and regulations, or order issued by the commissioner of insurance thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

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

Sec. 11. K.S.A. 40-3311 is hereby amended to read as follows: 40-3311. (a) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection (a) of K.S.A. 40-3305, or subsections (c) or (d) of K.S.A. 40-3306, and amendments thereto, or which otherwise violates this act, shall pay, in such directors' or officers' individual capacity, a civil forfeiture of not more than \$5,000 per violation, after notice and hearing before the commissioner of insurance. In determining the amount of the civil forfeiture, the commissioner of insurance shall take into account the appropriateness of the forfeiture

with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

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

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

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

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

Sec. 13. K.S.A. 2011 Supp. 40-401 is hereby amended to read as follows: 40-401. Any 10 or more persons, a majority of whom are citizens of this state, may associate in accordance with the provisions of this code and form an incorporated company, upon either the stock or mutual plan, to make insurance upon the lives of persons and every insurance appertaining thereto or connected therewith and to grant, purchase or dispose of annuities, and to issue funding agreements, guaranteed investment contracts and synthetic guaranteed investment contracts. Such companies may incorporate: (a) In their policies provisions or conditions for the waiver of premiums or for the granting of an annuity to the insured, or for special surrender values or other benefits in the event the insured shall from any cause become unemployed or totally and permanently disabled;

(b) in their policies provisions for acceleration of life or annuity benefits in advance of the time they would otherwise be payable subject to such reserve and other regulatory standards as the commissioner may prescribe by rules and regulations, except that any provision providing for acceleration of life or annuity benefits for persons diagnosed as having a medical condition usually requiring continuous confinement for the rest of the person's life in a nursing home or other eligible facility as defined in the policy, may also provide for acceleration of benefits upon diagnosis of such condition even if the person is not confined in a nursing home or similar facility; (c) in their policies and annuity contracts provisions or conditions for waiver of surrender charges upon terms and conditions as specified in the policy or contract, subject to rules and regulations adopted by the commissioner of insurance; or (d) in their policies provisions for the payment of a larger sum if death is caused by accident than if it results from any other causes.

Prior to the payment of any accelerated benefit, the insurer shall receive from any assignee or irrevocable beneficiary of the policy a signed acknowledgment of concurrence for the payment. For the purposes of this section, "totally and permanently disabled" means disabled continuously for a period, such period to be specified in any such provision, of not less than 60 days nor more than one year, except this provision shall not apply to and specifically excludes group life insurance. Such company may make insurance on the health of individuals, against accidental personal injury, disablement or death and against loss, liability or expense on account thereof. Such company so transacting such health and accident insurance business, or either kind, shall maintain statutory and separate reserves for such business, shall issue such contracts only in separate policies except as otherwise permitted herein and shall make separate reports to the commissioner of insurance of the premiums received and expenses and losses incurred in connection with such business, except that such reports will not be required for accelerated benefits incorporated in a life or annuity policy. Long-term care insurance meeting the applicable requirements of K.S.A. 40-2227 and 40-2228, and amendments thereto, may be incorporated in life insurance policies and annuities if approved by the commissioner.

The business of life insurance in this state shall not be in any way conducted or transacted by any company which in this state makes insurance on marine, fire, inland or any other like risks, except that, ~~life;~~ (a) Life, health and accident insurance on the group or industrial plan may be combined in one policy, which shall show the premium charged for life insurance and the premium charged for health and accident insurance, and the insured, at the insured's option, may discontinue either and by payment of the stated premium continue the other; and (b)(1) specified disease or critical illness riders, or both, meeting the applicable requirements of K.S.A. 40-2201 *et seq.*, and amendments thereto, and article 4 of Kansas administrative regulations, and amendments thereto, may be incorporated in life insurance policies which shall show the premium charged for specified disease or critical illness, or both, insurance and the premium charged for life insurance; and (2) the insured, at the insured's option, may discontinue the disease or critical illness rider, or both, and continue the life insurance policy by payment of the stated premium. The amount of capital stock of a company organized on the stock plan shall be not less than \$600,000.

Companies organized on the mutual plan shall be required to have applications from at least 200 persons for insurance upon their lives, aggregating not less than \$400,000,

upon which one full annual premium in cash shall have been paid. No such company shall transact any business of insurance until, if a stock company, all the capital stock named in its charter has been paid in cash including all contributions to surplus to be made by the original purchasers of such stock. The surplus shall be at least \$600,000, and at least \$400,000 in securities authorized by this code shall have been deposited with the commissioner of insurance pursuant to K.S.A. 40-229a, and amendments thereto, and if a mutual company, a guaranty fund of at least \$1,200,000, and at least \$400,000 of which shall be in securities as authorized in this code and deposited with the commissioner of insurance pursuant to K.S.A. 40-229a, and amendments thereto. The guaranty fund may be returned to the contributors with interest at 6% per annum whenever the surplus shall equal the amount of such guaranty fund and interest, and no company shall transact any business of insurance unless it shall maintain the capital or surplus or both required of a company commencing to transact business, or, if a mutual company, the required number and amount of applications for insurance have been received and the annual premiums collected in cash. The securities deposited pursuant to this section shall be held by the commissioner of insurance in trust for the benefit and protection of the policyholders or creditors, or both, of the company depositing the same and may be withdrawn only upon order of the commissioner of insurance.

The commissioner of insurance may adopt rules and regulations to implement the provisions of this section.";

And by renumbering sections accordingly;

On page 5, in line 12, by striking "2010 Supp. 40-2122 and 40-2124" and inserting "40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-3310, 40-3311 and 40-3311a and K.S.A. 2011 Supp. 40-401"; in line 15, by striking "Kansas register" and inserting "statute book";

On page 1, in the title, in line 3, by striking "the Kansas"; by striking all in lines 4 and 5; in line 6, by striking all before the second "and" and inserting "insurance; pertaining to insurance holding companies; pertaining to certain additional riders on life insurance policies; amending K.S.A. 40-3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-3310, 40-3311 and 40-3311a and K.S.A. 2011 Supp. 40-401";

And the bill be passed as amended.

Also, **HB 2485**, as amended by House Committee, be amended on page 3, following line 3, by inserting:

"Sec. 2. K.S.A. 2011 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b), (c) and (d), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

- (A) Satisfied the sentence imposed; or
- (B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsection (b), (c) and (d), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or

was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;

(7) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

(d) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-2,144, and amendments thereto.

(e) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement agency or diverting authority. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(f) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

- (2) the circumstances and behavior of the petitioner warrant the expungement; and
 - (3) the expungement is consistent with the public welfare.
- (g) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:
- (1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;
 - (2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:
 - (A) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;
 - (B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;
 - (C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
 - (D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;
 - (E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;
 - (F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;
 - (G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;
 - (H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;
 - (I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;
 - (J) in any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or
 - (K) for applications received on and after July 1, 2006, to aid in determining the

petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2011 Supp. 75-7c01 *et seq.*, and amendments thereto; or

(L) in any application for a license to engage in the business of insurance;

(3) the court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(h) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(i) Subject to the disclosures required pursuant to subsection (g), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(j) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed

appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(14) the Kansas sentencing commission;

(15) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto; or

(16) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; or

(17) the Kansas insurance commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for a license to engage in the business of insurance by such agent and the application was submitted by the person whose record has been expunged.

Sec. 3. K.S.A. 2011 Supp. 21-6614 is hereby amended to read as follows: 21-6614.

(a) (1) Except as provided in subsections (b), (c) ~~and~~, (d) and (e), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c) ~~and~~ (d) and (e), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsections (c) ~~and~~ (d) and (e), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(d) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2011 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505,

prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2011 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

(7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2011 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp. 21-5601, and amendments thereto;

(9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

(10) capital murder as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

(12) murder in the second degree as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

(13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

(14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

(15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;

(17) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(18) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(e) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(f) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

- (D) crime for which the defendant was arrested, convicted or diverted;
- (E) date of the defendant's arrest, conviction or diversion; and
- (F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. On and after ~~April 15, 2010 through June 30, 2011~~ May 19, 2011 through June 30, 2012, the supreme court may impose a charge, not to exceed ~~\$45~~ \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

~~(f)~~ (g) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement;

(3) the expungement is consistent with the public welfare.

~~(g)~~ (h) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2011 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed

appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; ~~or~~

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2011 Supp. 75-7c01 *et seq.*, and amendments thereto; or

(L) in any application for a license to engage in the business of insurance;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

~~(h)~~ (i) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

~~(h)~~ (i) Subject to the disclosures required pursuant to subsection ~~(h)~~ (g), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested,

convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(j) (k) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;
- (10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;
- (11) the Kansas sentencing commission;
- (12) the state gaming agency, and the request is accompanied by a statement that

the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; or

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 *et seq.*, and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm; or

(18) the Kansas insurance commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for a license to engage in the business of insurance by such agent and the application was submitted by the person whose record has been expunged.

(l) The provisions of subsection (k)(17) shall apply to records created prior to, on and after July 1, 2011.

Sec. 4. K.S.A. 2011 Supp. 22-2410 is hereby amended to read as follows: 22-2410.

(a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$100. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after ~~the effective date of this act~~ May 19, 2011 through June 30, 2012, the supreme court may impose an additional charge, not to

exceed \$19 per docket fee, to fund the costs of non-judicial personnel. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest; and
- (6) the identity of the arresting law enforcement agency.

No surcharge or fee shall be imposed to any person filing a petition pursuant to this section, who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or subsection (a) of K.S.A. 2011 Supp. 21-6107, and amendments thereto, or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding: (1) The arrest occurred because of mistaken identity;

- (2) a court has found that there was no probable cause for the arrest;
- (3) the petitioner was found not guilty in court proceedings; or
- (4) the expungement would be in the best interests of justice and: (A) Charges have been dismissed; or (B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined in K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of

the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; ~~or~~

(8) to aid in determining the petitioner's qualifications for a license to engage in the business of insurance; or

(9) in any other circumstances which the court deems appropriate.

(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:

(1) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 *et seq.*, and amendments thereto; or

(2) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

~~(g)~~ (h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

~~(h)~~ (i) The docket fee collected at the time the petition for expungement is filed shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

Sec. 5. K.S.A. 2011 Supp. 40-4903 is hereby amended to read as follows: 40-4903.

(a) Unless denied licensure pursuant to K.S.A. 2011 Supp. 40-4909, and amendments thereto, any person who meets the requirements of K.S.A. 2011 Supp. 40-4905, and amendments thereto, shall be issued an insurance agent license. An insurance agent may receive qualifications for a license in one or more of the following lines of authority:

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

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

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

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

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

annuity product that reflects the investment experience of a separate account.

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

(7) Credit—limited line credit insurance.

(8) Crop insurance—limited line insurance for damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or any other peril subsidized by the federal crop insurance corporation, including multi-peril crop insurance.

(9) Title insurance—limited line insurance that insures titles to property against loss by reason of defective titles or encumbrances.

(10) Travel insurance—limited line insurance for personal risks incidental to planned travel, including, but not limited to:

(A) Interruption or cancellation of trip or event;

(B) loss of baggage or personal effects;

(C) damages to accommodations or rental vehicles; or

(D) sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, for example, persons working overseas including military personnel deployed overseas.

(11) Pre-need funeral insurance—limited line insurance that allows for the purchase of a life insurance or annuity contract by or on behalf of the insured solely to fund a pre-need contract or arrangement with a funeral home for specific services.

(12) Bail bond insurance—limited line insurance that provides surety for a monetary guarantee that an individual released from jail will be present in court at an appointed time.

~~(8)~~(13) Any other line of insurance permitted under the provisions of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations promulgated thereunder.

(b) Unless suspended, revoked or refused renewal pursuant to K.S.A. 2011 Supp. 40-4909, and amendments thereto, an insurance agent license shall remain in effect as long as education requirements for resident individual agents are met by such insurance agent's biennial due date.

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

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

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

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

(5) Each licensed insurance agent who is an individual and holds a life insurance license solely for the purpose of selling life pre-need funeral insurance or annuity products ~~used to fund a prearranged funeral program and whose report of compliance required by subsection (g) is accompanied by a certification from an officer of each insurance company represented by such agent certifying that such agent transacted no other insurance business during the period covered by the report shall biennially obtain a minimum of two C.E.C.'s in courses certified as life or variable contracts under the life, accident and health or variable contracts category shall file a report on or before such agent's biennial due date affirming that such agent transacted no other insurance business during the period covered by the report. Upon request of the commissioner, an agent shall provide certification from an officer of each insurance company which has appointed such agent that the agent transacted no other insurance business during the period covered by the report. Agents who have offered to sell or sold only pre-need funeral insurance are exempt from the requirement to obtain C.E.C.'s.~~

(6) Each licensed insurance agent who is an individual and holds only a bail bond qualification is exempt from the requirement to obtain C.E.C.'s.

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

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

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

(2) If the required report showing proof of continuing education completion is not received by the commissioner by the individual insurance agent's biennial due date, such individual insurance agent's qualification and each and every corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the producer satisfactorily demonstrates completion of the continuing education requirement whichever is sooner. In addition the commissioner shall assess a penalty of \$100 for each license suspended. If such insurance agent fails to furnish to the commissioner the required proof of continuing education completion and the monetary penalty within 90 calendar days of such insurance agent's biennial due date, such

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

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

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

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

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

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

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

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

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

- (A) The name of provider or provider organization;
- (B) the title of such course, program of study or subject;
- (C) the date the course, program of study or subject will be offered;
- (D) the location where the course, program of study or subject will be offered;
- (E) an outline of each course, program of study or subject including a schedule of times when such material will be presented;

- (F) the names and qualifications of instructors;
- (G) the number of C.E.C.'s requested; ~~and~~
- (H) a nonrefundable C.E.C. qualification fee in the amount of \$50 per course, program of study or subject or \$250 per year for all courses, programs of study or subjects submitted by a specific provider or provider organization; and
- (I) a nonrefundable annual provider fee of \$100.

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

- (A) Property and casualty; or
 - (B) life insurance ~~(including annuity and variable contracts)~~, and accident and health insurance.
- (4) Each course, program of study or subject shall have a value of at least one C.E.C.

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

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

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

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

- (h) Upon request, the commissioner shall provide a list of all approved continuing

education courses currently available to the public.

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

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

Sec. 6. K.S.A. 2011 Supp. 40-4905 is hereby amended to read as follows: 40-4905.

(a) Subject to the provisions of K.S.A. 2011 Supp. 40-4904, and amendments thereto, it shall be unlawful for any person to sell, solicit or negotiate any insurance within this state unless such person has been issued a license as an insurance agent in accordance with this act.

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

(c) On and after January 1, 2013, as part of an application for a resident insurance agent license, the commissioner shall require the applicant to be fingerprinted and to submit to a state and national criminal history record check. This section shall not apply to a person applying for renewal, continuation or adding additional lines of authority to an existing home state insurance agent or a nonresident insurance agent license. The commissioner is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The commissioner may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and making the official determination of the qualifications and fitness of the person to be issued a license.

(d) The procedure for collecting fingerprints shall be established by the commissioner and shall comply with the requirements of the federal bureau of investigation.

(e) The commissioner, and any contractor or other designee of the commissioner, shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this act as confidential and shall apply security measures consistent with the criminal justice information services division of the federal bureau of investigation standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purposes authorized in this act.

(f) The commissioner may fix a nonrefundable fee in an amount equal to the costs of fingerprinting and the criminal history record check and establish procedures for payment of fees.

(g) Before approving the application, the commissioner shall determine that the applicant:

- (1) Is at least 18 years of age;

(2) has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 2011 Supp. 40-4909, and amendments thereto;

(3) has paid a nonrefundable fee in the amount of \$30 and has paid any additional fee required for fingerprinting and a criminal history record check; and

(4) has successfully passed the examination for each line of authority for which the applicant has applied.

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

(1) The name and address of a licensed agent who shall be responsible for the business entity's compliance with the insurance laws of this state and the rules and regulations promulgated thereunder;

(2) that each officer, director, partner and employee of the business entity who acts as an insurance agent is licensed as an insurance agent;

(3) that the business entity has disclosed to the department all of its officers, directors and partners whether or not such officers, directors, partners and employees are licensed as insurance agents; and

(4) that the business entity has disclosed to the department each officer, director, partner and employee who is licensed as an insurance agent.

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

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

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

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

(A) Is licensed as an individual insurance agent; and

(B) was not disclosed in such insurance agent's application for a license or any renewal thereof.

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

(A) Have terminated such relationship as an officer, director, partner or employee of such insurance agent; and

(B) ~~has~~ have been previously disclosed in such insurance agent's application for a license or any renewal thereof.

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

~~(j)~~(m) Any applicant whose application for a license, is denied shall be given an opportunity for a hearing in accordance with the provisions of the Kansas

administrative procedure act.

Sec. 7. K.S.A. 2011 Supp. 40-5504 is hereby amended to read as follows: 40-5504. (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 K.S.A. 2011 Supp. 40-5507, and amendments thereto. On and after January 1, 2013, as part of an application for a resident public adjuster license, the commissioner shall require the applicant to be fingerprinted and to submit to a state and national criminal history record check. This section shall not apply to a person applying for renewal or continuation to an existing resident public adjuster or nonresident public adjuster license. The commissioner is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The commissioner may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and making the official determination of the qualifications and fitness of the person to be issued a license.

(d) The procedure for collecting fingerprints shall be established by the commissioner and shall comply with the requirements of the federal bureau of investigation.

(e) The commissioner, and any contractor or other designee of the commissioner, shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this act as confidential and shall apply security measures consistent with the criminal justice information services division of the federal bureau of investigation standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purposes authorized in this act.

(f) The commissioner may fix a nonrefundable fee in an amount equal to the costs of fingerprinting and the criminal history record check and establish procedures for payment of fees.

Sec. 8. K.S.A. 2011 Supp. 40-5505 is hereby amended to read as follows: 40-5505. (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 K.S.A. 2011 Supp. 40-5508, 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 K.S.A. 2011 Supp. 40-5510, 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 K.S.A. 2011 Supp. 40-

5511, and amendments thereto;

(5) has paid ~~an~~ a nonrefundable application fee of \$100 and any additional fee for fingerprinting and a criminal history record check; 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.";

And by renumbering sections accordingly;

Also on page 3, in line 4, by striking "40-2,118 is" and inserting "12-4516, 21-6614, 21-6614a, 21-6614b, 21-6614c, 22-2410, 22-2410a, 40-2,118, 40-4903, 40-4905, 40-5504 and 40-5505 are";

On page 1, in the title, in line 1, after the second semicolon by inserting "relating to licensing of insurance agents; providing the commissioner of insurance access to expungement records for that purpose; relating to lines of insurance; relating to fingerprint and criminal record history checks for certain insurance agents and public adjusters;"; in line 2, by striking "40-2,118" and inserting "12-4516, 21-6614, 22-2410, 40-2,118, 40-4903, 40-4905, 40-5504 and 40-5505"; also in line 2, by striking "section" and inserting "sections; also repealing K.S.A. 2011 Supp. 21-6614a, 21-6614b, 21-6614c and 22-2410a"; and the bill be passed as amended.

Committee on **Ways and Means** recommends **HB 2454** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL NO. 2454," as follows:

"SENATE Substitute for HOUSE BILL NO. 2454

By Committee on Ways and Means

"AN ACT concerning the arts; creating the creative arts industries commission within the department of commerce; transferring the powers, functions and duties from the Kansas arts commission and the Kansas film services commission to the Kansas creative arts industries commission; abolishing the Kansas arts commission and the Kansas film services commission; creating the arts industries commission checkoff; amending K.S.A. 46-1801, 74-7901 and 75-2249 and K.S.A. 2011 Supp. 8-1,161, 75-2269 and 75-5072 and repealing the existing sections; also repealing K.S.A. 74-5202, 74-5203, 74-5204, 74-5205 and 74-5206 and K.S.A. 2011 Supp. 74-9201 and 74-9202.";

And the substitute bill be passed.

On motion of Senator Emler, the Senate adjourned until 10:00 a.m., Monday, March 19, 2012.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

