

SENATE BILL No. 22

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning insurance; relating to third party administrators;
2 regulation; amending K.S.A. 40-3801, 40-3802, 40-3804, 40-3806, 40-
3 3807, 40-3808, 40-3809 and 40-3810 and K.S.A. 2016 Supp. 40-3805
4 and repealing the existing sections; also repealing K.S.A. 40-3803.
5

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

7 New Section 1. K.S.A. 40-3801, 40-3802, 40-3804 through 40-3810
8 and sections 1 through 6, and amendments thereto, shall be known and
9 may be cited as the third party administrators act.

10 New Sec. 2. (a) A person shall apply to be an administrator in its
11 home state and shall receive a license from the regulatory authority of its
12 home state prior to performing any function of an administrator in this
13 state.

14 (b) A person applying to Kansas as its home state shall apply for
15 licensure by submitting to the commissioner an application in the form
16 prescribed by the commissioner that shall include or be accompanied by
17 the following information and documents:

18 (1) All basic organizational documents of the applicant, including any
19 articles of incorporation, articles of association, partnership agreement,
20 trade name certificate, trust agreement, shareholder agreement, certificate
21 of existence from the Kansas secretary of state and other applicable
22 documents and all amendments to such documents;

23 (2) the bylaws, rules, regulations or similar documents regulating the
24 internal affairs of the applicant;

25 (3) NAIC biographical affidavits for the individuals who are directly
26 or indirectly responsible for the conduct of affairs of the applicant,
27 including all members of the board of directors, board of trustees,
28 executive committee or other governing board or committee, the principal
29 officers in the case of a corporation or the partners or members in the case
30 of a partnership, association or limited liability company, any shareholders
31 or members holding directly or indirectly 10% or more of the voting stock,
32 voting securities or voting interest of the applicant and any other person
33 who directly or indirectly exercises control or influence over the affairs of
34 the applicant;

35 (4) audited annual financial statements or reports for the two most
36 recent fiscal years that demonstrate that the applicant has a positive net

1 worth. If the applicant has been in existence for less than two fiscal years,
2 the uniform application shall include financial statements or reports,
3 certified by at least two officers, owners or directors of the applicant and
4 prepared in accordance with GAAP, for any completed fiscal years and for
5 any month during the current fiscal year for which such financial
6 statements or reports have been completed. An audited annual financial
7 report prepared on a consolidated basis shall include a columnar
8 consolidating or combining worksheet that shall be filed with the report
9 and include the following:

10 (A) Amounts shown on the consolidated audited financial report
11 shown on the worksheet;

12 (B) amounts for each entity stated separately; and

13 (C) explanations of consolidating and eliminating entries included.

14 The applicant shall also include such other information as the
15 commissioner may require in order to review the current financial
16 condition of the applicant;

17 (5) in lieu of submitting audited financial statements, and upon
18 written application by an applicant and good cause shown, the
19 commissioner may grant a hardship exemption from filing audited
20 financial statements and allow the submission of unaudited financial
21 statements. Acceptable formats for unaudited financial statements, that
22 shall include notes, are:

23 (A) Reports compiled or reviewed by a certified public accountant; or

24 (B) internal financial reports prepared in accordance with GAAP,
25 certified by at least two officers, owners or directors of the administrator.

26 If unaudited financial statements are submitted, the applicant must also
27 secure and maintain a surety bond in a form prescribed by the
28 commissioner for the use and benefit of the commissioner to be held in
29 trust for the benefit and protection of covered persons and any payor or
30 self-funded plan against loss by reason of acts of fraud or dishonesty, for
31 the greater of 10% of funds handled for the benefit of Kansas residents or
32 \$20,000. Administrators of self-funded plans in Kansas are subject to the
33 mandatory surety bond requirement found in subsection (h), regardless of
34 whether they file audited or unaudited financial reports;

35 (6) a statement describing the business plan, including information on
36 staffing levels and activities, proposed in this state and nationwide. The
37 plan shall provide details setting forth the applicant's capability for
38 providing a sufficient number of experienced and qualified personnel in
39 the areas of claims processing, record keeping and underwriting;

40 (7) the license application fee as provided for by rules and
41 regulations; and

42 (8) such other pertinent information as may be required by the
43 commissioner.

1 (c) An administrator licensed or applying for licensure under the
2 provisions of this section shall make available for inspection by the
3 commissioner, copies of all contracts with payors or other persons utilizing
4 the services of the administrator.

5 (d) An administrator licensed or applying for licensure under the
6 provisions of this section shall produce its accounts, records and files for
7 examination, and makes its officers available to give information with
8 respect to its affairs, as often as reasonably required by the commissioner.

9 (e) The commissioner may refuse to issue a license if the
10 commissioner determines that the applicant or any individual responsible
11 for the conduct of affairs of the applicant is not competent, trustworthy,
12 financially responsible or of good personal and business reputation, or has
13 had an insurance or an administrator certificate of authority or license
14 denied or revoked for cause by any jurisdiction, or if the commissioner
15 determines that any of the grounds set forth in K.S.A. 40-3810, and
16 amendments thereto, exist with respect to the applicant.

17 (f) A license issued under this section shall remain valid, unless
18 surrendered, suspended or revoked by the commissioner, for so long as the
19 administrator continues in business in this state and remains in compliance
20 with the provisions of this act and any applicable rules and regulations.

21 (g) An administrator licensed or applying for licensure under the
22 provisions of this section shall immediately notify the commissioner of
23 any material change in its ownership, control or other fact or circumstance
24 affecting its qualification for a license in this state.

25 (h) An administrator licensed or applying for a home state license that
26 administers or will administer governmental or church self-insured plans
27 in this state or any other state shall maintain a surety bond for the use and
28 benefit of the commissioner to be held in trust for the benefit and
29 protection of covered persons and any payor or self-funded plan against
30 loss by reason of acts of fraud or dishonesty. The bond shall be in the
31 greater of the following amounts:

32 (1) \$100,000; or

33 (2) an amount equal to 10% of the aggregate total amount of self-
34 funded coverage under church plans or governmental plans handled in this
35 state and all additional states in which the administrator is authorized to do
36 business.

37 New Sec. 3. (a) Unless an administrator has obtained a home state
38 license in this state, any administrator who performs duties as an
39 administrator in this state shall obtain a nonresident administrator license
40 in accordance with the provisions of this section by filing with the
41 commissioner the uniform application, accompanied by a letter of
42 certification. In lieu of requiring an administrator to file a letter of
43 certification with the uniform application, the commissioner may verify

1 the nonresident administrator's home state certificate of authority or
2 license status through an electronic database maintained by the NAIC, its
3 affiliates or subsidiaries.

4 (b) An administrator shall not be eligible for a nonresident
5 administrator license under the provisions of this section if it does not hold
6 a license in a home state that has adopted a substantially similar law
7 governing administrators.

8 (c) Except as provided in subsections (b) and (h) the commissioner
9 shall issue to the administrator a nonresident administrator license
10 promptly upon receipt of a complete application.

11 (d) Each nonresident administrator shall file biennially, as a part of its
12 application for renewal of its license, a statement that its home state
13 administrator license remains in force and has not been revoked or
14 suspended by its home state during the preceding years.

15 (e) At the time of filing the application for licensing required under
16 the provisions of this section, the nonresident administrator shall pay a
17 license application fee as provided for by rules and regulations.

18 (f) An administrator licensed or applying for licensure under the
19 provisions of this section shall produce its accounts, records and files for
20 examination, and make its officers available to give information with
21 respect to its affairs, as often as reasonably required by the commissioner.

22 (g) A nonresident administrator is not required to hold a nonresident
23 administrator license in this state if the administrator is licensed in its
24 home state and the administrator's duties in this state are limited to:

25 (1) The administration of a group policy or plan and no more than a
26 total of 20% of covered persons, for all plans the administrator services,
27 reside in this state; and

28 (2) the total number of covered persons residing in this state is less
29 than 100.

30 (h) The commissioner may refuse to issue a nonresident administrator
31 license, or delay the issuance of a nonresident administrator license, if the
32 commissioner determines that, due to events or information obtained
33 subsequent to the home state's licensure of the administrator, the
34 nonresident administrator cannot satisfy the requirements of this act or that
35 grounds exist for the home state's revocation or suspension of the
36 administrator's home state certificate of authority or license.

37 New Sec. 4. (a) Each administrator licensed under the provisions of
38 this act shall file an annual report for the preceding calendar year with the
39 commissioner on or before July 1 of each year, or within such extension of
40 time as the commissioner may grant for good cause. The annual report
41 shall include:

42 (1) An audited financial statement attested to by an independent
43 certified public accountant. An audited annual financial report prepared on

1 a consolidated basis shall include a columnar consolidating or combining
2 worksheet that shall be filed with the report and include the following:

3 (A) Amounts shown on the consolidated audited financial report
4 shown on the worksheet;

5 (B) amounts for each entity stated separately; and

6 (C) explanations of consolidating and eliminating entries included.

7 (2) In lieu of submitting an audited financial statement, and upon
8 written application by an administrator and good cause shown, the
9 commissioner may grant a hardship exemption from filing audited
10 financial statements and allow the submission of unaudited financial
11 statements. Acceptable formats for unaudited financial statements, that
12 shall include notes, are:

13 (A) Reports compiled or reviewed by a certified public accountant; or

14 (B) internal financial reports prepared in accordance with GAAP,
15 certified by at least two officers, owners or directors of the administrator.

16 If unaudited financial statements are submitted, the administrator must
17 secure and maintain a surety bond in a form prescribed by the
18 commissioner for the use and benefit of the commissioner to be held in
19 trust for the benefit and protection of covered persons and any payor or
20 self-funded plan against loss by reason of acts of fraud or dishonesty, for
21 the greater of 10% of funds handled for the benefit of Kansas residents or
22 \$20,000.

23 (b) The annual report shall be in the form and contain such matters as
24 the commissioner prescribes and shall be verified by at least two officers,
25 owners or directors of the administrator.

26 (c) The annual report shall include the complete names and addresses
27 of all payors and for self-funded plans, all employers and trusts, with
28 which the administrator had agreements during the preceding fiscal year.
29 The report shall also include the number of Kansas residents covered by
30 each of the plans.

31 New Sec. 5. (a) The license of an administrator shall be denied,
32 suspended or revoked if the commissioner finds that the administrator:

33 (1) Is in an unsound financial condition;

34 (2) is using such methods or practices in the conduct of its business
35 so as to render its further transaction of business in this state hazardous or
36 injurious to insured persons or the public; or

37 (3) has failed to pay any judgment rendered against it in this state
38 within 60 days after the judgment has become final.

39 (b) The commissioner may deny, suspend or revoke the license of an
40 administrator if the director finds that the administrator:

41 (1) Has violated any lawful rule or regulation or order of the
42 commissioner or any provision of chapter 40 of the Kansas Statutes
43 Annotated, and amendments thereto;

1 (2) has refused to be examined or to produce its accounts, records and
2 files for examination, or if any individual responsible for the conduct of
3 affairs of the administrator, including members of the board of directors,
4 board of trustees, executive committee or other governing board or
5 committee, the principal officers in the case of a corporation or the
6 partners or members in the case of a partnership, association or limited
7 liability company, any shareholder or member holding directly or
8 indirectly 10% or more of the voting stock, voting securities or voting
9 interest of the administrator and any other person who exercises control or
10 influence over the affairs of the administrator, has refused to give
11 information with respect to its affairs or has refused to perform any other
12 legal obligation as to an examination, when required by the commissioner;

13 (3) has, without just cause, refused to pay proper claims or perform
14 services arising under its contracts or has, without just cause, caused
15 covered individuals to accept less than the amount due them or caused
16 covered individuals to employ attorneys or bring suit against the
17 administrator to secure full payment or settlement of such claims;

18 (4) fails, at any time, to meet any qualification for which issuance of
19 the license could have been refused had the failure then existed and been
20 known to the commissioner;

21 (5) any of the individuals responsible for the conduct of its affairs,
22 including members of the board of directors, board of trustees, executive
23 committee or other governing board or committee, the principal officers in
24 the case of a corporation or the partners or members in the case of a
25 partnership, association or limited liability company, any shareholder or
26 member holding directly or indirectly 10% or more of its voting stock,
27 voting securities or voting interest and any other person who exercises
28 control or influence over its affairs, has been convicted of, or has entered a
29 plea of guilty or nolo contendere to any felony, or to a misdemeanor that
30 evidences bad moral character, dishonesty, a lack of integrity and financial
31 responsibility or an unfitness and inability to provide acceptable service to
32 the consuming public without regard to whether adjudication was
33 withheld; or

34 (6) is under suspension or revocation in another state.

35 (c) The commissioner may, in the commissioner's discretion and
36 without advance notice or hearing, immediately suspend the license of an
37 administrator, if the commissioner finds that one or more of the following
38 circumstances exist:

39 (1) The administrator is insolvent or impaired;

40 (2) a proceeding for receivership, conservatorship, rehabilitation or
41 other delinquency proceeding regarding the administrator has been
42 commenced in any state;

43 (3) the financial condition or business practices of the administrator

1 otherwise pose an imminent threat to the public health, safety or welfare of
2 the residents of this state; or

3 (4) a final order suspending or revoking the administrator's license in
4 its home state has been entered.

5 (d) If the commissioner finds that one or more grounds exist for the
6 suspension or revocation of a license issued under the provisions of this
7 act, the commissioner may, in lieu of or in addition to suspension or
8 revocation, impose an administrative penalty upon the administrator
9 pursuant to the Kansas administrative procedure act.

10 New Sec. 6. Any policies, certificates, booklets, termination notices
11 or other written communications delivered by the payor to the
12 administrator for delivery to insured parties or covered individuals shall be
13 delivered by the administrator promptly after receipt of instructions from
14 the payor to deliver them.

15 Sec. 7. K.S.A. 40-3801 is hereby amended to read as follows: 40-
16 3801. *As used in this act:*

17 (a) ~~Wherever the term "Administrator" or "third party administrator"~~
18 ~~or "TPA" is used in this act, it shall mean~~ *means any person, company,*
19 ~~corporation, partnership or other legal entity who directly or indirectly~~
20 ~~underwrites, collects charges or premiums from, or who adjusts or settles~~
21 ~~claims on, residents of this state in connection with life or accident and~~
22 ~~sickness, annuity or health insurance coverage or annuities other than~~
23 ~~offered or provided by a payor, except any of the following:~~

24 (1) ~~An employer on behalf of its employees or the employees of one~~
25 ~~or more, or a wholly owned direct or indirect subsidiary or affiliated~~
26 ~~corporations of such of an employer, on behalf of its employees or the~~
27 ~~employees of one or more subsidiaries or affiliated corporations of such~~
28 ~~employer.~~

29 (2) A union or association on behalf of its members;

30 (3) An insurance company ~~which~~ *that* is either ~~licensed~~ *authorized*
31 *transact insurance* in this state or acting as an insurer with respect to a
32 policy lawfully issued and delivered by ~~it~~ *such company* in and pursuant to
33 the laws of a state in which the insurer was authorized to ~~do~~ *transact* an
34 insurance business, ~~or organizations transacting business in this state~~
35 ~~pursuant to articles 18, 19, 19a, 19b or 32 of chapter 40, Kansas Statutes~~
36 ~~Annotated, including their sales representatives a hospital, medical, dental~~
37 ~~or optometric service corporation or a health care service organization,~~
38 ~~including their sales representatives, possessing a valid certificate of~~
39 ~~authority in this state when engaged in the performance of their duties as~~
40 ~~such.~~

41 (4) ~~A life or accident and sickness agent~~ *An insurance producer*
42 *licensed to sell life, annuities or health coverage* in this state whose
43 activities are limited exclusively to the sale ~~and service, solicitation and~~

1 *negotiation of insurance;*

2 (5) A creditor on behalf of its debtors with respect to insurance
3 covering a debt between the creditor and its debtors;

4 (6) A trust, its trustees, agents and employees acting ~~thereunder,~~
5 *pursuant to such trust* established in conformity with 29 U.S.C. § 186;

6 (7) A trust exempt from taxation under section 501(a) of the internal
7 revenue code, its trustees, and employees acting ~~thereunder,~~ *pursuant to*
8 *such trust* or a custodian, ~~its and the custodian's agents and~~ or employees
9 acting pursuant to a custodian account which meets the requirements of
10 section 401(f) of the internal revenue code;

11 (8) A ~~bank,~~ credit union or ~~other~~ a financial institution ~~which~~ *that* is
12 subject to supervision or examination by federal or state banking
13 authorities, *or a mortgage lender; to the extent they collect and remit*
14 *premiums to licensed insurance producers or to limited lines producers or*
15 *authorized insurers in connection with loan payments.*

16 (9) A credit card issuing company ~~which~~ *that* advances for and
17 collects premiums or charges from its credit card holders who have
18 authorized ~~it to do so, provided such company does not adjust or settle~~
19 ~~claims, or such collection.~~

20 (10) A person who adjusts or settles claims in the normal course of
21 ~~his or her~~ *that person's* practice or employment as an attorney at law; and
22 who does not collect charges or premiums in connection with life ~~or~~
23 ~~accident and sickness insurance coverage or annuities, annuity or health~~
24 ~~insurance coverage.~~

25 (11) *A person licensed as a managing general agent in this state*
26 *whose activities are limited to the scope of activities conveyed under such*
27 *license.*

28 (12) *A person who is affiliated with an insurer and who acts solely as*
29 *an administrator for the direct and assumed insurance business of an*
30 *affiliated insurer. The insurer is responsible for the acts of the*
31 *administrator and is responsible for providing all of the administrator's*
32 *books and records to the commissioner upon a request from the*
33 *commissioner. For purposes of this paragraph, "insurer" means a licensed*
34 *insurance company, hospital or professional service corporation or a*
35 *managed care organization.*

36 (b) *"Affiliate" or "affiliated" means an entity or person who, directly*
37 *or indirectly through one or more intermediaries, controls or is controlled*
38 *by, or is under common control with, a specified entity or person.*

39 (c) *"Business entity" means a corporation, association, partnership,*
40 *limited liability company or other legal entity.*

41 (d) *"Collateral" means funds, letters of credit or any item with*
42 *economic value owned by the payor but held by an insurer or TPA in case*
43 *it needs to be used to fulfill premium or loss reimbursement obligations in*

1 *accordance with a contract between the insurer or TPA and the payor.*
2 *"Collateral" shall also include anticipated loss prepayments made prior to*
3 *the payment of losses, pursuant to arrangements where reimbursement is*
4 *not due until after losses have been paid.*

5 (e) *"Commissioner" means the commissioner of insurance of the state*
6 *of Kansas.*

7 (f) *"Control," "controlling," "controlled by" and "under common*
8 *control with" means the possession, direct or indirect, of the power to*
9 *direct or cause the direction of the management and policies of a person,*
10 *whether through the ownership of voting securities, by contract other than*
11 *a commercial contract for goods or nonmanagement services, or*
12 *otherwise, unless the power is the result of an official position with or*
13 *corporate office held by the person. Control shall be presumed to exist if*
14 *any person, directly or indirectly, owns, controls, holds with the power to*
15 *vote, or holds proxies representing 10% or more of the voting securities of*
16 *any other person. This presumption may be rebutted by a showing made in*
17 *the manner provided in K.S.A. 40-3305, and amendments thereto, that*
18 *control does not exist in fact. The commissioner may determine, after*
19 *furnishing all persons in interest notice and an opportunity to be heard*
20 *and making specific findings of fact to support the determination, that*
21 *control exists in fact, notwithstanding the absence of a presumption to that*
22 *effect.*

23 (g) *"GAAP" means United States generally accepted accounting*
24 *principles consistently applied.*

25 (h) *"Home state" means the United States jurisdiction that has*
26 *adopted this act or a substantially similar law governing TPAs and that*
27 *has granted the TPA a home state TPA license.*

28 (i) *"Insurance producer" means a person required to be licensed*
29 *under the laws of this state to sell, solicit or negotiate insurance, and also*
30 *includes a business entity whose primary activities are the sales,*
31 *solicitation and negotiation of insurance.*

32 (j) *"Insurer" means a person undertaking to provide life, annuity or*
33 *health coverage or self-funded coverage who is subject to regulation*
34 *under Chapter 40 of the Kansas Statutes Annotated, and amendments*
35 *thereto.*

36 (k) *"NAIC" means the national association of insurance*
37 *commissioners.*

38 (l) *"Nonresident TPA" means a TPA with a home state other than*
39 *Kansas.*

40 (m) *"Payor" means an insurer or an employer administering its*
41 *employee benefit plan or the employee benefit plan of an affiliated*
42 *employer under common management or control.*

43 (n) *"Person" means an individual or a business entity.*

1 (o) "Stop-loss insurance" means insurance protecting an employer or
2 other person responsible for an otherwise self-insured health or life
3 benefit plan against obligations under the plan, but "stop-loss insurance"
4 does not include reinsurance written for an insurance company.

5 (p) "Underwrites" or "underwriting" means, but is not limited to, the
6 acceptance of employer or individual applications for coverage of
7 individuals in accordance with the written rules of the insurer or self-
8 funded plan, or the overall planning and coordinating of a benefits
9 program.

10 (q) "Uniform application" means the current version of the NAIC
11 uniform application for third party administrators.

12 Sec. ~~7.~~ **8.** K.S.A. 40-3802 is hereby amended to read as follows: 40-
13 3802. (a) No administrator shall act as such without a written agreement
14 between the administrator and the insurer, and such written agreement
15 shall be retained as part of the official records of both the insurer and the
16 administrator for the duration of the agreement and five ~~(5)~~ years
17 thereafter. Such written agreement shall contain provisions which include
18 the requirements of K.S.A. ~~40-3803, 40-3805~~ ~~to~~ through 40-3809,
19 ~~inclusive and amendments thereto~~, except insofar as those requirements do
20 not apply to the functions performed by the administrator.

21 ~~(b) Where a policy is issued to a trustee or trustees, a copy of the trust~~
22 ~~agreement and any amendments thereto shall be furnished to the insurer by~~
23 ~~the administrator and shall be retained as part of the official records of~~
24 ~~both the insurer and the administrator for the duration of the policy and~~
25 ~~five (5) years thereafter. The written agreement shall include a statement~~
26 ~~of duties that the administrator is expected to perform on behalf of the~~
27 ~~insurer and the lines, classes or types of insurance for which the~~
28 ~~administrator is to be authorized to administer. The agreement shall make~~
29 ~~provision with respect to underwriting or other standards pertaining to the~~
30 ~~business underwritten by the insurer.~~

31 (c) *The insurer or administrator may, with written notice to the other*
32 *party and the commissioner, terminate the written agreement as provided*
33 *in the agreement. The insurer may suspend the underwriting authority of*
34 *the administrator during the pendency of any dispute regarding the*
35 *termination of the written agreement. The insurer shall fulfill any lawful*
36 *obligations with respect to policies affected by the written agreement*
37 *regardless of any dispute between the insurer and the administrator.*

38 Sec. ~~8.~~ **9.** K.S.A. 40-3804 is hereby amended to read as follows: 40-
39 3804. ~~Whenever an~~ *If an insurer utilizes the services of an administrator*
40 ~~under the terms of a written contract as required in K.S.A. 40-3802, the~~
41 *payment to the administrator of any premiums or charges for insurance by*
42 *or on behalf of the insured shall be deemed to have been received by the*
43 *insurer; and the payment of return premiums or claims forwarded by the*

1 insurer to the administrator shall not be deemed payment to the insured or
2 claimant until such payments are received by the insured or claimant.
3 Nothing ~~herein~~ shall limit any right of the insurer against the administrator
4 resulting from its failure to make payments to the insurer, insureds or
5 claimants.

6 Sec. ~~9~~ **10**. K.S.A. 2016 Supp. 40-3805 is hereby amended to read as
7 follows: 40-3805. (a) ~~Every administrator shall maintain at its principal~~
8 ~~administrative office for the duration of the written agreement referred to~~
9 ~~in K.S.A. 40-3802 and five years thereafter adequate and make available~~
10 ~~to the payor complete books and records of all transactions between it,~~
11 ~~insurers and insured persons performed on behalf of the payor.~~ Such books
12 and records shall be maintained in accordance with prudent standards of
13 insurance record keeping *and shall be maintained for a period of not less*
14 *than five years from the date of their creation.*

15 (b) The commissioner of insurance shall have access to such books
16 and records for the ~~purpose~~ *purposes* of examination, audit and inspection.
17 ~~Any information contained therein which is a trade secret under the~~
18 ~~uniform trade secrets act (K.S.A. 60-3320 et seq., and amendments~~
19 ~~thereto), including, but not limited to, the identity and addresses of~~
20 ~~policyholders and certificateholders~~ *Any documents, materials or other*
21 *information in the possession or control of the commissioner that are*
22 *furnished by a TPA, payor, insurance producer or an employee or agent*
23 *thereof acting on behalf of the TPA, payor or insurance producer or*
24 *obtained in an investigation, shall be confidential, ~~except~~ by law and*
25 *privileged, shall not be subject to the open records act, shall not be subject*
26 *to subpoena, and shall not be subject to discovery or admissible in*
27 *evidence in any private civil action. The commissioner ~~may~~ is authorized*
28 *to use such documents, materials or other information in any proceedings*
29 *instituted against the administrator. The insurer shall retain the right to*
30 *continuing access to such books and records of the administrator sufficient*
31 *to permit the insurer to fulfill all of its contractual obligations to insured*
32 *persons, subject to any restrictions in the written agreement between the*
33 *insurer and administrator on the proprietary rights of the parties in such*
34 *books and records the furtherance of any regulatory or legal action*
35 *brought as a part of the commissioner's official duties. The provisions of*
36 *this paragraph shall expire on July 1, 2022, unless the legislature reviews*
37 *and reenacts this provision prior to July 1, 2022.*

38 (c) *Neither the commissioner nor any person who receives*
39 *documents, materials or other information while acting under the*
40 *authority of the commissioner shall be permitted or required to testify in*
41 *any private civil action concerning confidential documents, materials or*
42 *information subject to subsection (b).*

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

1 *the commissioner may:*

2 (1) *Share documents, materials or other information, including the*
3 *confidential and privileged documents, materials or other information*
4 *subject to this section, with other state, federal and international*
5 *regulatory agencies, the NAIC, its affiliates or subsidiaries and with state,*
6 *federal and international law enforcement authorities, provided the*
7 *recipient agrees to maintain the confidentiality and privileged status of the*
8 *document, material or other information; and*

9 (2) *may receive documents, materials or information, including*
10 *otherwise confidential and privileged documents, materials or*
11 *information, from the NAIC, its affiliates or subsidiaries and from*
12 *regulatory and law enforcement officials of other foreign or domestic*
13 *jurisdictions, and shall maintain as confidential or privileged any*
14 *document, material or information received with notice or the*
15 *understanding that it is confidential or privileged under the laws of the*
16 *jurisdiction that is the source of the document, material or information.*

17 (e) *No waiver of any applicable privilege or claim of confidentiality*
18 *in the documents, materials or information shall occur as a result of*
19 *disclosure to the commissioner under this section.*

20 (f) *Nothing in this section shall prohibit the commissioner from*
21 *releasing final, adjudicated actions, including for cause terminations that*
22 *are open to public inspection pursuant to the open records act, to a*
23 *database or other clearing house service maintained by the NAIC, its*
24 *affiliates or subsidiaries.*

25 (g) *The payor shall own the records generated by the administrator*
26 *pertaining to the payor; however, the administrator shall retain the right to*
27 *continuing access to books and records to permit the administrator to*
28 *fulfill all of its contractual obligations to insured parties, claimants and*
29 *the payor; and its obligations to maintain records available to the*
30 *commissioner.*

31 (h) *In the event the payor and the administrator cancel their*
32 *agreement, notwithstanding the provisions of subsection (a), the*
33 *administrator may, by written agreement with the payor, transfer all*
34 *records to a new administrator rather than retain them for five years. In*
35 *such cases, the new administrator shall acknowledge, in writing, that it is*
36 *responsible for retaining the records of the prior administrator as required*
37 *in subsection (a).*

38 ~~Sec. 10.~~ **II.** *K.S.A. 40-3806 is hereby amended to read as follows:*
39 *40-3806. An administrator may use only such advertising pertaining to the*
40 *business underwritten by an insurer as has been approved by such insurer*
41 *in advance of its use. An administrator that mentions any current or*
42 *former client in its advertising must obtain the client's prior written*
43 *consent.*

1 Sec. ~~H.~~ **12.** K.S.A. 40-3807 is hereby amended to read as follows:
2 40-3807. (a) All insurance charges ~~or~~, premiums, collateral and loss
3 reimbursements collected by an administrator on behalf of or for ~~an insurer~~
4 ~~or insurers~~ a payor, and the return of premiums or collateral received from
5 ~~such insurer or insurers~~ that payor, shall be held by the administrator in a
6 fiduciary capacity. Such funds shall be immediately remitted to the person
7 or persons entitled thereto, or shall be deposited promptly in a ~~bank~~
8 fiduciary account established and maintained by the administrator in a
9 federally or state-insured financial institution. ~~If charges or premiums so~~
10 ~~deposited have been collected on behalf of or for more than one (1)~~
11 ~~insurer, the administrator shall maintain records clearly recording the~~
12 ~~deposits in and withdrawals from such account on behalf of or for each~~
13 ~~insurer. The written agreement between the administrator and the payor~~
14 ~~shall provide for the administrator to periodically render an accounting to~~
15 ~~the payor detailing all transactions performed by the administrator~~
16 ~~pertaining to the business of the payor, and the written agreement between~~
17 ~~the payor and the administrator shall include specifications of this~~
18 ~~reporting.~~

19 (b) The administrator shall keep copies of all ~~such~~ records of any
20 fiduciary account maintained or controlled by the administrator, and, upon
21 request of ~~an insurer~~ a payor, shall furnish ~~such insurer~~ the payor with
22 copies of such records pertaining to deposits and withdrawals on behalf of
23 ~~or for such insurer~~ the payor. ~~If charges or premiums so deposited have~~
24 ~~been collected on behalf of or for more than one payor, or for the payment~~
25 ~~of claims associated with more than one policy, the administrator shall~~
26 ~~keep records clearly recording the deposits in and withdrawals from the~~
27 ~~account on behalf of each payor and relating to each policyholder.~~

28 (c) The administrator shall not pay any claim by withdrawals from
29 ~~such~~ a fiduciary account in which premiums or charges are deposited.
30 Withdrawals from ~~the funds deposited in such~~ a fiduciary account shall be
31 made, as provided in the written agreement between the administrator and
32 the ~~insurer~~ payor, and only for the following purposes: (1) Remittance to
33 an insurer entitled thereto; (2) deposit in an account maintained in the
34 name of ~~such insurer~~, the payor; (3) transfer to and deposit in a claims
35 paying account, with claims to be paid as provided in ~~K.S.A. 40-3809,~~
36 ~~subsection (d);~~ (4) payment to a group policyholder for remittance to the
37 ~~insurer~~ payor entitled thereto; (5) payment to the administrator of its
38 ~~commission earned commissions, fees or charges,~~ or; (6) remittance of
39 return premiums to the person or persons entitled thereto; or (7) payment
40 to other service providers as authorized by the payor.

41 (d) All claims paid by the administrator from funds collected on
42 behalf of or for a payor shall be paid only as authorized by the payor.
43 Payments from an account maintained or controlled by the administrator

1 *may be made for the following purposes including the payment of claims:*
2 *(1) Payment of valid claims; (2) payment of expenses associated with the*
3 *handling of claims to the administrator or to other service providers*
4 *approved by the payor; (3) remittance to the payor, or transfer to a*
5 *successor administrator as directed by the payor, for the purpose of*
6 *paying claims and associated expenses; and (4) return of funds held as*
7 *collateral or prepayment, to the person entitled to those funds, upon a*
8 *determination by the payor that those funds are no longer necessary to*
9 *secure or facilitate the payment of claims and associated expenses.*

10 ~~Sec. 12.~~ **13.** K.S.A. 40-3808 is hereby amended to read as follows:
11 ~~40-3808. Any policies or certificates which an administrator adjusts or~~
12 ~~settles, the compensation to the administrator with regard to such policies~~
13 ~~shall in no way be contingent on claim experience. This section shall not~~
14 ~~prevent the compensation of an administrator from being based on~~
15 ~~premiums or charges collected or number of claims paid or processed (a)~~
16 *An administrator shall not enter into an agreement or understanding with*
17 *a payor in which the effect is to make the amount of the administrator's*
18 *commissions, fees or charges contingent upon savings effected by the*
19 *adjustment, settlement and payment of losses covered by the payor's*
20 *obligations. This provision shall not prohibit an administrator from*
21 *receiving performance-based compensation for providing hospital or*
22 *other auditing services, from providing managed care or related services,*
23 *or from being compensated for subrogation expenses.*

24 *(b) This section shall not prevent the compensation of an*
25 *administrator from being based on premiums or charges collected or the*
26 *number of claims paid or processed.*

27 ~~Sec. 13.~~ **14.** K.S.A. 40-3809 is hereby amended to read as follows:
28 ~~40-3809. (a) Where the services of an administrator are utilized, the~~
29 ~~administrator shall provide a written notice, approved by the payor, to~~
30 ~~covered individuals advising them of the identity of and relationship~~
31 ~~among the administrator, the policyholder and the payor.~~

32 *(b) When an administrator collects funds, it must identify and state*
33 *separately in writing to the person paying to the administrator any charge*
34 *or premium for insurance coverage the amount of any such charge or*
35 *premium specified by the insurer for such insurance coverage. All claims*
36 *paid by the administrator from funds collected on behalf of the insurer*
37 *shall be paid only on drafts of and as authorized by such insurer the reason*
38 *for collection of each item shall be identified to the insured party and each*
39 *item shall be shown separately from any premium. Additional charges may*
40 *not be made for services to the extent the services have already been paid*
41 *for by the payor.*

42 *(c) The administrator shall disclose to the payor all charges, fees and*
43 *commissions that the administrator receives arising from services it*

1 *provides for the payor, including any fees or commissions paid by payors*
2 *providing reinsurance or stop-loss insurance.*

3 ~~Sec. 14.~~ **15.** K.S.A. 40-3810 is hereby amended to read as follows:
4 40-3810. ~~No person shall act as or hold oneself out to be an administrator~~
5 ~~in this state, unless such person holds a certificate of registration as an~~
6 ~~administrator issued by the commissioner of insurance. Application for~~
7 ~~such certificate shall be made to the commissioner on a form prescribed by~~
8 ~~such commissioner and shall be accompanied by a filing fee of \$100. Such~~
9 ~~certificate may be continued for successive annual periods by notifying the~~
10 ~~commissioner of such intent and payment of a \$50 continuation fee. Such~~
11 ~~certificate shall be issued or continued by the commissioner to an~~
12 ~~administrator unless the commissioner after due notice and hearing shall~~
13 ~~have determined that the administrator is not competent, trustworthy,~~
14 ~~financially responsible or of good personal and business reputation, or has~~
15 ~~had a previous application for an insurance license denied for cause within~~
16 ~~five years.~~

17 ~~Hearings under this section shall be conducted in accordance with the~~
18 ~~provisions of the Kansas administrative procedure act~~ *A person who is not*
19 *required to be licensed as an administrator under this act and who directly*
20 *or indirectly underwrites, collects charges or premiums from or adjusts or*
21 *settles claims on residents of this state only in connection with life, annuity*
22 *or health coverage provided by a self-funded plan other than a*
23 *governmental or church plan, shall register with the commissioner*
24 *annually, verifying its status as herein described. This section shall not*
25 *apply to an insurer or to an individual performing these actions as an*
26 *employee of an insurer. This section shall also not apply to a person*
27 *performing these actions under contract to or as an employee of an*
28 *administrator.*

29 ~~Sec. 15.~~ **16.** K.S.A. 40-3801, 40-3802, 40-3803, 40-3804, 40-3806,
30 40-3807, 40-3808, 40-3809 and 40-3810 and K.S.A. 2016 Supp. 40-3805
31 are hereby repealed.

32 ~~Sec. 16.~~ **17.** This act shall take effect and be in force from and after
33 its publication in the Kansas register.