

As Amended by House Committee

Session of 2019

SENATE BILL No. 66

By Committee on Financial Institutions and Insurance

1-31

1 AN ACT concerning insurance; relating to ~~insurance holding companies~~
2 **the version of risk-based capital instructions in effect**; exempting
3 certain domestic insurers from filing enterprise risk reports; amending
4 K.S.A. 2018 Supp. **40-2c01 and 40-3305** and repealing the existing
5 ~~section~~ **sections**.

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

8 **Section 1. K.S.A. 2018 Supp. 40-2c01 is hereby amended to read**
9 **as follows: 40-2c01. As used in this act:**

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

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

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

18 (d) "Foreign insurer" means any insurance company or risk
19 retention group not domiciled in this state which is licensed or
20 registered to do business in this state pursuant to article 41 of chapter
21 40 of the Kansas Statutes Annotated, *and amendments thereto*, or
22 K.S.A. 40-209, and amendments thereto.

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

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

29 (g) "Property and casualty insurer" means any insurance
30 company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter
31 40 of the Kansas Statutes Annotated, and amendments thereto, but
32 shall not include monoline mortgage guaranty insurers, financial
33 guaranty insurers and title insurers.

34 (h) "Negative trend" means, with respect to a life and health
35 insurer, a negative trend over a period of time, as determined in
36 accordance with the "trend test calculation" included in the RBC

1 instructions defined in subsection (j).

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

3 (j) "RBC instructions" means the risk-based capital instructions
4 promulgated by the NAIC, which are in effect on December 31, ~~2017~~
5 2018, or any later version promulgated by the NAIC as may be
6 adopted by the commissioner under K.S.A. 2018 Supp. 40-2c29, and
7 amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

32 ~~Section 1.~~ Sec. 2. K.S.A. 2018 Supp. 40-3305 is hereby amended to
33 read as follows: 40-3305. (a) Every insurer ~~which that~~ is authorized to do
34 business in this state and ~~which that~~ is a member of an insurance holding
35 company system shall register with the commissioner of insurance, except
36 a foreign insurer subject to registration requirements and standards
37 adopted by statute or regulation in the jurisdiction of its domicile ~~which~~
38 ~~that~~ are substantially similar to those contained in this section. Any insurer
39 ~~which that~~ is subject to registration under this section shall register within
40 15 days after it becomes subject to registration, and annually thereafter by
41 May 1 of each year unless the commissioner of insurance for good cause
42 shown extends the time for registration, and then within such extended
43 time. The commissioner of insurance may require any authorized insurer

1 ~~which that~~ is a member of an insurance holding company system and
2 ~~which that~~ is not subject to registration under this section to furnish a copy
3 of the registration statement, the summary specified in subsection (c) or
4 other information filed by such insurance company with the insurance
5 regulatory authority of domiciliary jurisdiction.

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

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

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

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

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

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

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

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

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

26 (F) reinsurance agreements;

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

28 (H) consolidated tax allocation agreements;

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

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

35 (6) ~~if requested by the commissioner of insurance, the insurer shall~~
36 ~~include~~ financial statements of or within an insurance holding company
37 system, including all affiliates, *if requested by the commissioner of*
38 *insurance*. Financial statements may include, but are not limited to, annual
39 audited financial statements filed with the U.S. securities and exchange
40 commission (SEC) pursuant to the securities act of 1933, as amended, or
41 the securities exchange act of 1934, as amended. An insurer required to
42 file financial statements pursuant to this paragraph may satisfy the request
43 by providing the commissioner of insurance with the most recently filed

1 parent corporation financial statements that have been filed with the SEC;

2 (7) statements that the insurer's board of directors and principal
3 officers oversee corporate governance and internal controls and that the
4 insurer's principal officers have approved, implemented and continue to
5 maintain and monitor corporate governance and internal control
6 procedures; and

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

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

12 (d) No information need be disclosed on the registration statement
13 filed pursuant to subsection (b) if such information is not material for the
14 purpose of this section. Unless the commissioner of insurance by rules and
15 regulations or order provides otherwise, sales, purchases, exchanges, loans
16 or extensions of credit, investments or guarantees, involving ~~5%~~ 0.5% or
17 less of an insurer's admitted assets as of the December 31 immediately
18 preceding shall be deemed immaterial for purposes of this section.

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

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

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

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

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

43 (j) The provisions of this section shall not apply to any information or

1 transaction if and to the extent the commissioner of insurance by rule and
2 regulation or order ~~shall exempt~~ *exempts* the same from the provisions of
3 this section.

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

17 (l) (1) Except as provided in paragraph (2), the ultimate controlling
18 person of every insurer subject to registration also shall file an annual
19 enterprise risk report. The report, to the best of the ultimate controlling
20 person's knowledge and belief, shall identify the material risks within the
21 insurance holding company system that could pose enterprise risk to the
22 insurer. *The report shall be appropriate to the nature, scale and*
23 *complexity of the insurer.* The report shall be filed with the lead state
24 commissioner of insurance of the insurance holding company system as
25 determined by the procedures within the financial analysis handbook
26 adopted by the national association of insurance commissioners. The first
27 enterprise risk report shall be filed no later than May 1, 2015, and annually
28 thereafter by May 1 of each year unless the commissioner of insurance
29 extends the time for filing for good cause shown.

30 (2) The ultimate controlling person of ~~an~~ *a domestic insurer that is*
31 *authorized, admitted or eligible to engage in the business of insurance*
32 *only in this state* with total direct and assumed annual premiums of less
33 than \$300 million is not required to submit an enterprise risk report *under*
34 *paragraph (1) unless the ultimate controlling person of the domestic*
35 *insurer also controls other insurers that do not meet the requirements of*
36 *this subsection. For the purposes of this subsection, an insurer is not*
37 *considered to be authorized, admitted or eligible to engage in the business*
38 *of insurance only in this state if the insurer directly or indirectly writes or*
39 *assumes insurance in any other manner in another state.*

40 (m) The failure of an insurer or an ultimate controlling person of the
41 insurer to file a registration statement, any summary of the registration
42 statement or enterprise risk filing within the specified time for filing shall
43 be a violation by the insurer or by the ultimate controlling person of the

1 insurer, as applicable.

2 Sec. ~~2~~ **3**. K.S.A. 2018 Supp. **40-2c01** and 40-3305~~is~~ **are** hereby
3 repealed.

4 Sec. ~~3~~ **4**. This act shall take effect and be in force from and after its
5 publication in the statute book.