

HOUSE BILL No. 2508

By Committee on Insurance

1-23

1 AN ACT pertaining to insurance holding companies; amending K.S.A. 40-
2 3302, 40-3304, 40-3305, 40-3306, 40-3307, 40-3308, 40-3309, 40-
3 3310, 40-3311 and 40-3311a and repealing the existing sections.

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

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

12 (b) The powers of the commissioner of insurance with respect to
13 supervisory colleges include, but are not limited to, the following:

14 (1) Initiating the establishment of a supervisory college;

15 (2) clarifying the membership and participation of other supervisors
16 in the supervisory college;

17 (3) clarifying the functions of the supervisory college and the role of
18 other regulators, including the establishment of a group-wide supervisor;

19 (4) coordinating the ongoing activities of the supervisory college,
20 including planning meetings, supervisory activities and processes for
21 information sharing;

22 (5) establishing a crisis management plan; and

23 (6) establishing a regular assessment to the insurer for the payment of
24 expenses incurred pursuant to subsection (c).

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

32 (d) In order to assess the business strategy, financial position, legal
33 and regulatory position, risk exposure, risk management and governance
34 processes, and as part of the examination of individual insurers in
35 accordance with K.S.A. 40-3307, and amendments thereto, the
36 commissioner of insurance may participate in a supervisory college with

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Committee on House Insurance
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(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) 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 and its affiliates registered under K.S.A. 40-3305, and amendments thereto, to produce information not in the possession of the insurer and its affiliates, if the insurer and its affiliates can obtain access to such information pursuant to contractual relationships, statutory obligations or another method. In the event the insurer and its affiliates cannot obtain the information requested by the commissioner of insurance, the insurer and its affiliates shall provide the commissioner of insurance a detailed explanation of the reason that the insurer and its affiliates 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 or its affiliates to pay a penalty of not more than \$5,000 for each day's delay, or may suspend or revoke the license of the insurer or of its affiliates.

(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

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1 conduct of the examination under subsection (a) of this section. Any
2 persons so retained shall be under the direction and control of the
3 commissioner of insurance and shall act in a purely advisory capacity.

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

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

23 Sec. 8. K.S.A. 40-3308 is hereby amended to read as follows: 40-
24 3308. All information, documents and copies thereof obtained by or
25 disclosed to the commissioner of insurance or any other person in the
26 course of an examination or investigation made pursuant to K.S.A. 40-
27 3307 and amendments thereto and all information reported pursuant to
28 K.S.A. 40-3305 and amendments thereto, shall be given confidential
29 treatment and shall not be subject to subpoena. Such information,
30 documents and copies thereto shall not be made public by the
31 commissioner of insurance, the national association of insurance
32 commissioners or any other person, except to insurance departments of
33 other states and as otherwise provided in this section, without the prior
34 written consent of the insurer to which it pertains. If the commissioner of
35 insurance, after giving the insurer and its affiliates who would be affected
36 thereby, notice and opportunity to be heard in accordance with the
37 provisions of the Kansas administrative procedure act, determines that the
38 interests of policyholders, shareholders or the public will be served by the
39 publication thereof, the commissioner may publish all or any part thereof
40 in such a manner as the commissioner may deem appropriate.

41 (g) Documents, materials or other information obtained by or
42 disclosed to the commissioner of insurance or any other person in the
43 course of an examination or investigation made pursuant to K.S.A. 40-