

**HOUSE BILL No. 2136**

By Committee on Insurance and Pensions

1-26

1 AN ACT concerning insurance; relating to the regulation of the business  
2 thereof; granting the commissioner the power to subpoena witnesses  
3 and order depositions when conducting certain investigations; updating  
4 certain definitions relating to service contracts and surplus lines  
5 insurance; interest rate calculations relating to nonforfeiture law for  
6 individual deferred annuities; application requirements for certification  
7 of utilization review organizations; requirements for out-of-state risk  
8 retention groups to do business in state; applications for registration of  
9 professional employer organizations; repealing the automobile club  
10 services act; amending K.S.A. ~~40-103~~, 40-22a04, 40-22a06 and 40-  
11 4103 and K.S.A. 2020 Supp. 40-201a, 40-246i, 40-4,104, 40-22a05 and  
12 44-1704 and repealing the existing sections; also repealing K.S.A. 40-  
13 2405, 40-2501, 40-2502, 40-2503, 40-2504, 40-2505, 40-2506, 40-  
14 2507, 40-2508, 40-2509, 40-2510, 40-2511, 40-2512 and 40-2513.  
15

Strike 40-103

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

17 Section 1. ~~K.S.A. 40-103 is hereby amended to read as follows: 40-~~  
18 ~~103. (a) The commissioner of insurance shall have the:~~  
19 ~~(1) General supervision, control and regulation of corporations,~~  
20 ~~companies, associations, societies, exchanges, partnerships, or persons~~  
21 ~~authorized to transact the business of insurance, indemnity or suretyship in~~  
22 ~~this state; and shall have the~~  
23 ~~(2) power to make all reasonable rules and regulations necessary to~~  
24 ~~enforce the laws of this state relating thereto.~~  
25 ~~(b) The commissioner shall have the authority to:~~  
26 ~~(1) Make investigations and examinations:~~  
27 ~~(A) In connection with any application for registration or licensure of~~  
28 ~~any person or entity under the laws of this state or any registration or~~  
29 ~~licensure already granted; or~~  
30 ~~(B) whenever it appears to the commissioner, upon the basis of a~~  
31 ~~complaint or information, that reasonable grounds exist for the belief that~~  
32 ~~an investigation or examination is necessary or advisable to provide more~~  
33 ~~complete protection to the public;~~  
34 ~~(2) appoint investigators to aid in investigations conducted pursuant~~  
35 ~~to this subsection and K.S.A. 2020 Supp. 40-113, and amendments thereto;~~  
36 ~~(3) subpoena witnesses and compel such witnesses to attend and~~

Strike all text in Section 1 and redesignate sections as needed.

- 1 ~~testify;~~
- 2 ~~(4) compel the production of books, records and other documents;~~
- 3 ~~and~~
- 4 ~~(5) order depositions to be taken of any witness residing within or~~
- 5 ~~outside the state, in the manner prescribed by law for depositions in civil~~
- 6 ~~actions, and make such depositions returnable to the commissioner.~~
- 7 ~~(c) If any person does not appear or refuses to testify, file a~~
- 8 ~~statement, produce records or otherwise does not obey a subpoena issued~~
- 9 ~~by the commissioner, the commissioner may apply to any court of~~
- 10 ~~competent jurisdiction to enforce compliance with the subpoena. The court~~
- 11 ~~may:~~
- 12 ~~(1) Hold the person in contempt;~~
- 13 ~~(2) order the person to appear before the commissioner;~~
- 14 ~~(3) order the person to testify about the matter under investigation or~~
- 15 ~~in question;~~
- 16 ~~(4) order the production of records;~~
- 17 ~~(5) grant injunctive relief, including restricting or prohibiting the~~
- 18 ~~transaction of the business of insurance;~~
- 19 ~~(6) impose a civil penalty of not greater than \$2,000 for each~~
- 20 ~~violation; or~~
- 21 ~~(7) grant any other necessary or appropriate relief.~~

22 Sec. 2. K.S.A. 2020 Supp. 40-201a is hereby amended to read as  
 23 follows: 40-201a. (a) The marketing, sale, offering for sale, issuance,  
 24 making, proposing to make and administration of a service contract shall  
 25 not be construed to be the business of insurance and shall be exempt from  
 26 regulation as insurance pursuant to chapter 40 of the Kansas Statutes  
 27 Annotated, and amendments thereto.

As used in

- 28 (b) ~~For the purposes of~~ this section:
- 29 (1) "Service contract" means a contract or agreement for a separate or
- 30 additional consideration, for any specified duration, to service, repair,
- 31 replace or maintain all or any part of any structural component, appliance
- 32 or utility system of any residential property, consumer good or other
- 33 property; or to indemnify for service, repair, replacement or maintenance
- 34 for consumer good or other property, due to a defect in materials,
- 35 workmanship, normal wear and tear; or as a result of power surges or as a
- 36 result of accidental damage from the handling of any consumer good or
- 37 other property, with or without additional provision for indemnity
- 38 payments, when service repair or replacement is not reasonably,
- 39 commercially or economically feasible. A service contract may also
- 40 include additional provisions for incidental payment of indemnity under
- 41 limited circumstances, including, but not limited to, towing, rental and
- 42 emergency road service.
- 43 (2) "Service contract" also includes any nonconsumer commercial

1 service contract.

2 (3) "Service contract" does not include an automobile club service as  
3 defined in K.S.A. 40-2507, and amendments thereto.

4 (4) "Service contract" includes, but is not limited to, a contract that  
5 offers any one or more of the following services:

6 (A) The repair or replacement of tires or wheels on a motor vehicle  
7 damaged as a result of coming into contact with road hazards;

8 (B) the removal of dents, dings or creases on a motor vehicle that can  
9 be repaired using the process of paintless dent removal without affecting  
10 the existing paint finish and without replacing vehicle body panels,  
11 sanding, bonding or painting; and

12 (C) the replacement of a motor vehicle key or key-fob in the event  
13 that the key or key-fob becomes inoperable or is lost or stolen.

14 (5)(4) "Road hazard" means a hazard that is encountered while  
15 driving a motor vehicle, including, but not be limited to, potholes, rocks,  
16 wood debris, metal parts, glass, plastic, curbs or composite scraps.

17 (c) (1) No service contract that is exempt from regulation as  
18 insurance pursuant to chapter 40 of the Kansas Statutes Annotated, and  
19 amendments thereto, pursuant to this section shall contain any provision  
20 for consequential damages unless such consequential damages are caused  
21 by the failure of service, repair, replacement or maintenance rendered  
22 under the service contract.

23 (2) No service contract that is exempt from regulation as insurance  
24 pursuant to chapter 40 of the Kansas Statutes Annotated, and amendments  
25 thereto, pursuant to this section shall contain any provision, except as  
26 exempt by this section, that would otherwise be covered by a contract of  
27 property or liability insurance issued in this state.

28 Sec. 3. K.S.A. 2020 Supp. 40-246i is hereby amended to read as  
29 follows: 40-246i. The following definitions shall apply to K.S.A. 40-246b  
30 through 40-246e, and amendments thereto, and K.S.A. 2020 Supp. 40-  
31 246g, and amendments thereto:

32 (a) "Exempt commercial purchaser" means any person purchasing  
33 commercial insurance that, at the time of placement, meets the following  
34 requirements:

35 (1) The person employs or retains a qualified risk manager to  
36 negotiate insurance coverage;

37 (2) the person has paid aggregate nationwide commercial property  
38 and casualty insurance premiums in excess of \$100,000 in the immediately  
39 preceding 12 months; and

40 (3) the person:

41 (A) Possesses a net worth in excess of \$20,040,000, except that this  
42 amount shall be adjusted every five years by ~~rules and regulations of~~  
43 *publication in the Kansas register* by the commissioner of insurance to

"Service contract" does not include an automobile service contract. As used in this paragraph, "Automobile club service contact" means a contract that provides, in consideration of dues, assessments or periodic payments of money, promises to assist in matters relating to travel and the operation, use and maintenance of an automobile in the supply of features or services or reimbursement thereof, which may include:

(A) Such services as community traffic safety services, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service and legal fee reimbursement service in the defense of traffic offenses, none of which enumerated features or services, if provided by the promisor itself, shall be subject to the insurance laws of this state;

(B) the purchase of accidental injury and death benefits insurance coverage issued, as provided by applicable statutes, by an insurance company authorized to do business in Kansas; or

(C) such other features or services not deemed by the commissioner to constitute the business of insurance.

(5)