

SENATE BILL No. 291

By Committee on Financial Institutions and Insurance

1-22

1 AN ACT concerning insurance; relating to anti-fraud investigations;
2 granting subpoena and investigative powers to the commissioner of
3 insurance; granting certain law enforcement duties to insurance
4 investigators; requiring special law enforcement training of
5 investigators before carrying firearms; amending K.S.A. 40-103 and
6 74-5602 and K.S.A. 2019 Supp. 40-113 and repealing the existing
7 sections.
8

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

10 Section 1. K.S.A. 40-103 is hereby amended to read as follows: 40-
11 103. (a) The commissioner of insurance shall have general supervision,
12 control and regulation of corporations, companies, associations, societies,
13 exchanges, partnerships, or persons authorized to transact the business of
14 insurance, indemnity or suretyship in this state and shall have the power to
15 make all reasonable rules and regulations necessary to enforce the laws of
16 this state relating thereto, *and take such other action as the commissioner*
17 *deems necessary for the effective administration of chapter 40 of the*
18 *Kansas Statutes Annotated, and amendments thereto.*

19 (b) *The commissioner shall have the authority to:*

20 (1) *Make investigations and examinations:*

21 (A) *In connection with any application for registration or licensure of*
22 *any person or entity under the laws of this state relating thereto, or any*
23 *registration or licensure already granted; or*

24 (B) *whenever it appears to the commissioner, upon the basis of a*
25 *complaint or information, that reasonable grounds exist for the belief that*
26 *an investigation or examination is necessary or advisable to provide more*
27 *complete protection to the public;*

28 (2) *appoint investigators to aid in investigations conducted pursuant*
29 *to K.S.A. 2019 Supp. 40-113, and amendments thereto;*

30 (3) *subpoena witnesses and compel them to attend and testify;*

31 (4) *compel the production of books, records and other documents;*
32 *and*

33 (5) *order depositions to be taken of any witness residing within or*
34 *outside the state. The depositions shall be taken in the manner prescribed*
35 *by law for depositions in civil actions and made returnable to the*
36 *commissioner.*

1 (c) *If any person refuses to obey a subpoena issued by the*
2 *commissioner; the commissioner may make application to any court of*
3 *competent jurisdiction to order the person to appear before the*
4 *commissioner and produce documentary evidence or give evidence as*
5 *directed in the subpoena. Any person who fails to obey the order of the*
6 *court shall be subject to punishment by the court as contempt of court.*

7 (d) *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 or a court of another state to enforce compliance*
11 *with the subpoena. The court 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; and*

21 (7) *grant any other necessary or appropriate relief.*

22 Sec. 2. K.S.A. 2019 Supp. 40-113 is hereby amended to read as
23 follows: 40-113. (a) There is hereby established within the insurance
24 department a criminal anti-fraud division of the Kansas insurance
25 department. The criminal anti-fraud division shall accept information and
26 complaints regarding possible insurance fraud. The criminal anti-fraud
27 division shall also investigate possible violations of Kansas criminal
28 statutes pertaining to and related to insurance fraud. The criminal anti-
29 fraud division shall prepare and refer criminal cases to the attorney
30 general, or in consultation with the attorney general to the proper county or
31 district attorney, who may, in such prosecutor's discretion, with or without
32 such a reference, institute the appropriate criminal proceedings under the
33 laws of this state. The commissioner may pay extradition and witness
34 expenses and other costs associated with the case.

35 (b) Complaints of insurance fraud shall be accepted from Kansas
36 consumers, other divisions within the insurance department, other state
37 and federal law enforcement agencies, and insurance companies. The
38 criminal anti-fraud division's investigators shall prepare clear and concise
39 reports concerning investigations and preserve evidence.

40 (c) *Each investigator appointed by the commissioner of insurance*
41 *pursuant to K.S.A. 40-103, and amendments thereto, shall have the*
42 *authority to make arrests, serve subpoenas and any other process, conduct*
43 *searches and seizures, store evidence and carry firearms, concealed or*

1 *otherwise, while investigating violations of chapter 40 of the Kansas*
2 *Statutes Annotated, and amendments thereto. The director of police*
3 *training at the law enforcement training center is authorized to offer and*
4 *carry out a special course of instruction for investigators performing law*
5 *enforcement duties under the authority of this section. Such investigators*
6 *shall not carry firearms without having first successfully completed such*
7 *special law enforcement training course.*

8 (d) The criminal anti-fraud division shall assist in the preparation and
9 presentation of criminal cases as requested by the attorney general or
10 county or district attorney. The criminal anti-fraud division shall perform
11 other such duties in the prevention, detection, investigation and
12 prosecution of insurance fraud as may be necessary. Such preparation may
13 include affidavits, interviews, preservation of evidence and securing the
14 attendance of individuals involved in the case. In presenting the
15 prosecution's case, members of the criminal anti-fraud division may testify
16 as to the facts of the case.

17 Sec. 3. K.S.A. 74-5602 is hereby amended to read as follows: 74-
18 5602. As used in the Kansas law enforcement training act:

19 (a) "Training center" means the law enforcement training center
20 within the university of Kansas, created by K.S.A. 74-5603, and
21 amendments thereto.

22 (b) "Commission" means the Kansas commission on peace officers'
23 standards and training, created by K.S.A. 74-5606, and amendments
24 thereto, or the commission's designee.

25 (c) "Chancellor" means the chancellor of the university of Kansas, or
26 the chancellor's designee.

27 (d) "Director of police training" means the director of police training
28 at the law enforcement training center.

29 (e) "Director" means the executive director of the Kansas commission
30 on peace officers' standards and training.

31 (f) "Law enforcement" means the prevention or detection of crime
32 and the enforcement of the criminal or traffic laws of this state or of any
33 municipality thereof.

34 (g) "Police officer" or "law enforcement officer" means a full-time or
35 part-time salaried officer or employee of the state, a county or a city,
36 whose duties include the prevention or detection of crime and the
37 enforcement of the criminal or traffic laws of this state or of any
38 municipality thereof. Such terms shall include, but not be limited to: The
39 sheriff, undersheriff and full-time or part-time salaried deputies in the
40 sheriff's office in each county; deputy sheriffs deputized pursuant to
41 K.S.A. 19-2858, and amendments thereto; conservation officers of the
42 Kansas department of wildlife, parks and tourism; university police
43 officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus

1 police officers, as defined in K.S.A. 22-2401a, and amendments thereto;
2 law enforcement agents of the director of alcoholic beverage control; law
3 enforcement agents designated by the secretary of revenue pursuant to
4 K.S.A. 2019 Supp. 75-5157, and amendments thereto; law enforcement
5 agents of the Kansas lottery; law enforcement agents of the Kansas racing
6 commission; deputies and assistants of the state fire marshal having law
7 enforcement authority; capitol police, existing under the authority of
8 K.S.A. 75-4503, and amendments thereto; special investigators of the
9 juvenile justice authority; special investigators designated by the secretary
10 of labor; *investigators appointed by the commissioner of insurance*
11 *pursuant to K.S.A. 40-103, and amendments thereto; special investigators*
12 *appointed by the securities commissioner pursuant to K.S.A. 17-12a602,*
13 *and amendments thereto;* and law enforcement officers appointed by the
14 adjutant general pursuant to K.S.A. 48-204, and amendments thereto. Such
15 terms shall also include railroad policemen appointed pursuant to K.S.A.
16 66-524, and amendments thereto; school security officers designated as
17 school law enforcement officers pursuant to K.S.A. 72-6146, and
18 amendments thereto; the manager and employees of the horsethief
19 reservoir benefit district pursuant to K.S.A. 2019 Supp. 82a-2212, and
20 amendments thereto; and the director of the Kansas commission on peace
21 officers' standards and training and any other employee of such
22 commission designated by the director pursuant to K.S.A. 74-5603, and
23 amendments thereto, as a law enforcement officer. Such terms shall not
24 include any elected official, other than a sheriff, serving in the capacity of
25 a law enforcement or police officer solely by virtue of such official's
26 elected position; any attorney-at-law having responsibility for law
27 enforcement and discharging such responsibility solely in the capacity of
28 an attorney; any employee of the commissioner of juvenile justice who is
29 employed solely to perform correctional, administrative or operational
30 duties related to juvenile correctional facilities; any employee of the
31 secretary of corrections, any employee of the secretary for children and
32 families; any deputy conservation officer of the Kansas department of
33 wildlife, parks and tourism; or any employee of a city or county who is
34 employed solely to perform correctional duties related to jail inmates and
35 the administration and operation of a jail; or any full-time or part-time
36 salaried officer or employee whose duties include the issuance of a citation
37 or notice to appear provided such officer or employee is not vested by law
38 with the authority to make an arrest for violation of the laws of this state or
39 any municipality thereof, and is not authorized to carry firearms when
40 discharging the duties of such person's office or employment. Such term
41 shall include any officer appointed or elected on a provisional basis.
42 (h) "Full-time" means employment requiring at least 1,000 hours of
43 law enforcement related work per year.

1 (i) "Part-time" means employment on a regular schedule or
2 employment which requires a minimum number of hours each payroll
3 period, but in any case requiring less than 1,000 hours of law enforcement
4 related work per year.

5 (j) "Misdemeanor crime of domestic violence" means a violation of
6 domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or
7 K.S.A. 2019 Supp. 21-5414, and amendments thereto, or any other
8 misdemeanor under federal, municipal or state law that has as an element
9 the use or attempted use of physical force, or the threatened use of a
10 deadly weapon, committed against a person with whom the offender is
11 involved or has been involved in a "dating relationship" or is a "family or
12 household member" as defined in K.S.A. 2019 Supp. 21-5414, and
13 amendments thereto, at the time of the offense.

14 (k) "Auxiliary personnel" means members of organized nonsalaried
15 groups who operate as an adjunct to a police or sheriff's department,
16 including reserve officers, posses and search and rescue groups.

17 (l) "Active law enforcement certificate" means a certificate which
18 attests to the qualification of a person to perform the duties of a law
19 enforcement officer and which has not been suspended or revoked by
20 action of the Kansas commission on peace officers' standards and training
21 and has not lapsed by operation of law as provided in K.S.A. 74-5622, and
22 amendments thereto.

23 Sec. 4. K.S.A. 40-103 and 74-5602 and K.S.A. 2019 Supp. 40-113
24 are hereby repealed.

25 Sec. 5. This act shall take effect and be in force from and after its
26 publication in the statute book.