

HOUSE BILL No. 2139

By Committee on Insurance

2-3

1 AN ACT concerning insurance; relating to rates and rate modifications for
2 workers compensation insurance; **[authorizing the state fair board to**
3 **purchase workers compensation insurance;]** amending K.S.A. 40-2109
4 **and K.S.A. 2010 Supp. 40-955** and repealing the existing ~~section~~ sections.
5

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

7 **[New Section 1. (a) Notwithstanding the provisions of K.S.A. 44-**
8 **576, and amendments thereto, the state fair board is hereby authorized to**
9 **purchase workers compensation insurance. Any contract for the purchase**
10 **of workers compensation insurance entered into by the state fair board**
11 **shall be purchased in the manner prescribed for the purchase of supplies,**
12 **materials, equipment and contractual services as provided in K.S.A. 75-**
13 **3738 through 75-3744, and amendments thereto, and any such contract**
14 **having a premium or rate in excess of \$500 shall be purchased on the basis**
15 **of sealed bids. Such contract shall not be subject to the provisions of**
16 **K.S.A. 75-4101 through 75-4114 and K.S.A. 2010 Supp. 75-4125, and**
17 **amendments thereto.]**

18 **[(b) If the state fair board enters into a contract for the purchase of**
19 **workers compensation insurance as described in subsection (a), from and**
20 **after the end of the payroll period in which such workers compensation**
21 **policy takes effect, the state fair board shall not be subject to the self-**
22 **insurance assessment prescribed by K.S.A. 44-576, and amendments**
23 **thereto, and the director of accounts and reports shall cease to transfer**
24 **any amounts for such self-assessment for the state fair board pursuant to**
25 **such statute.]**

26 **[(c) Notwithstanding the provisions of K.S.A. 44-575, and**
27 **amendments thereto, if the state fair board enters into a contract for the**
28 **purchase of workers compensation insurance as described in subsection**
29 **(a), the state workers compensation self-insurance fund shall not be liable**
30 **for any compensation claims under the workers compensation act relating**
31 **to the state fair board and arising during the term of such] [contract, or**
32 **for any other amounts otherwise required to be paid under the workers**
33 **compensation act during the term of such contract.]**

34 **[(d) The state fair board shall notify the secretary of administration**

1 and the Kansas health policy authority of the effective date of any
2 workers compensation policy acquired pursuant to this section.]

3 ~~[Section 1. Sec. 2. K.S.A. 2010 Supp. 40-955 is hereby amended to~~
4 ~~read as follows: 40-955. (a) Every insurer shall file with the commissioner,~~
5 ~~except as to inland marine risks where general custom of the industry is~~
6 ~~not to use manual rates or rating plans, every manual of classifications,~~
7 ~~rules and rates, every rating plan, policy form and every modification of~~
8 ~~any of the foregoing which it proposes to use. Every such filing shall~~
9 ~~indicate the proposed effective date and the character and extent of the~~
10 ~~coverage contemplated and shall be accompanied by the information~~
11 ~~upon which the insurer supports the filings. A filing and any supporting~~
12 ~~information shall be open to public inspection after it is filed with the~~
13 ~~commissioner. An insurer may satisfy its obligations to make such filings~~
14 ~~by authorizing the commissioner to accept on its behalf the filings made~~
15 ~~by a licensed rating organization or another insurer. Nothing contained in~~
16 ~~this act shall be construed to require any insurer to become a member or~~
17 ~~subscriber of any rating organization.~~

18 (b) Certificate of insurance forms must be filed with the
19 commissioner of insurance and approved prior to use. Notwithstanding
20 the "large risk" filing exemption in subsection (j), a certificate of
21 insurance cannot be used to modify, alter or amend the insurance policy it
22 describes. The certificate of insurance shall contain the following or
23 similar language: The certificate of insurance neither affirmatively nor
24 negatively amends, extends or alters the coverage afforded by the policies
25 listed thereon. An industry standard setting organization may be
26 authorized by the commissioner of insurance to file certificate of
27 insurance forms on behalf of authorized insurers.

28 (c) Any rate filing for the basic coverage required by K.S.A. 40-3401
29 et seq., and amendments thereto, loss costs filings for workers
30 compensation, and rates for assigned risk plans established by article 21
31 of chapter 40 of the Kansas Statutes Annotated, *and amendments thereto,*
32 or rules and regulations established by the commissioner shall require
33 approval by the commissioner before its use by the insurer in this state. As
34 soon as reasonably possible after such filing has been made, the
35 commissioner shall in writing approve or disapprove the same, except that
36 any filing shall be deemed approved unless disapproved within 30 days of
37 receipt of the filing.

38 (d) Any other rate filing, except personal lines filings, shall become
39 effective on filing or any prospective date selected by the insurer, subject
40 to the commissioner disapproving the same if the rates are determined to
41 be inadequate, excessive, unfairly discriminatory or otherwise fails to
42 meet the requirements of this act. *Subject to the provisions of K.S.A. 40-954,*
43 *and amendments thereto, an insurer may file up to four workers compensation*

1 *loss cost multipliers and up to four policy holder dividend plans within a*
2 *single insurer. Eligibility for individual loss cost multipliers and dividend*
3 *plans shall be based on insurer underwriting criteria and judgment. Personal*
4 **lines rate filings shall be on file for a waiting period of 30 days before**
5 **becoming effective, subject to the commissioner disapproving the same if**
6 **the rates are determined to be inadequate, excessive, unfairly**
7 **discriminatory or otherwise fail to meet requirements of this act. The**
8 **term "personal lines" shall mean insurance for noncommercial**
9 **automobile, homeowners, dwelling fire-and-renters insurance policies, as**
10 **defined by the commissioner by rules and regulations. A filing complies**
11 **with this act unless it is disapproved by the commissioner within the**
12 **waiting period or pursuant to subsection (f).**

13 (e) In reviewing any rate filing the commissioner may require the
14 insurer or rating organization to provide, at the insurer's or rating
15 organization's expense, all information necessary to evaluate the
16 reasonableness of the filing, to include payment of the cost of an actuary
17 selected by the commissioner to review any rate filing, if the department
18 of insurance does not have a staff actuary in its employ.

19 (f) (1) (A) If a filing is not accompanied by the information required
20 by this act, the commissioner shall promptly inform the company or
21 organization making the filing. The filing shall be deemed to be complete
22 when the required information is received by the commissioner or the
23 company or organization certifies to the commissioner the information
24 requested is not maintained by the company or organization and cannot
25 be obtained.

26 (B) If the commissioner finds a filing does not meet the requirements
27 of this act, the commissioner shall send to the insurer or rating
28 organization that made the filing, written notice of disapproval of the
29 filing, specifying in what respects the filing fails to comply and stating the
30 filing shall not become effective.

31 (C) If at any time after a filing becomes effective, the commissioner
32 finds a filing does not comply with this act, the commissioner shall after a
33 hearing held on not less than 10 days' written notice to every insurer and
34 rating organization that made the filing issue an order specifying in what
35 respects the filing failed to comply with the act, and stating when, within a
36 reasonable period thereafter, the filing shall be no longer effective. Copies
37 of the order shall be sent to such insurer or rating organization. The order
38 shall not affect any contract or policy made or issued prior to the
39 expiration of the period set forth in the order.

40 (2) (A) In the event an insurer or organization has no legally effective
41 rate because of an order disapproving rates, the commissioner shall
42 specify an interim rate at the time the order is issued. The interim rate
43 may be modified by the commissioner on the commissioner's own motion

1 or upon motion of an insurer or organization.

2 (B) The interim rate or any modification thereof shall take effect
3 prospectively in contracts of insurance written or renewed 15 days after
4 the commissioner's decision setting interim rates.

5 (C) When the rates are finally determined, the commissioner shall
6 order any overcharge in the interim rates to be distributed appropriately,
7 except refunds to policyholders the commissioner determines are de
8 minimis may not be required.

9 (3) (A) Any person or organization aggrieved with respect to any
10 filing that is in effect may make written application to the commissioner
11 for a hearing thereon, except that the insurer or rating organization that
12 made the filing may not proceed under this subsection. The application
13 shall specify the grounds to be relied on by the applicant.

14 (B) If the commissioner finds the application is made in good faith,
15 that the applicant would be so aggrieved if the applicant's grounds are
16 established, and that such grounds otherwise justify holding such a
17 hearing, the commissioner shall, within 30 days after receipt of the
18 application, hold a hearing on not less than 10 days' written notice to the
19 applicant and every insurer and rating organization that made such filing.

20 (C) Every rating organization receiving a notice of hearing or copy of
21 an order under this section, shall promptly notify all its members or
22 subscribers affected by the hearing or order. Notice to a rating
23 organization of a hearing or order shall be deemed notice to its members
24 or subscribers.

25 (g) No insurer shall make or issue a contract or policy except in
26 accordance with filings which have been filed or approved for such
27 insurer as provided in this act.

28 (1) On an application for personal motor vehicle insurance where the
29 applicant has applied for collision or comprehensive coverage, the
30 applicant shall be allowed to identify a lienholder listed on the certificate
31 of title for the motor vehicle described in the application.

32 (2) On an application for property insurance on real property, the
33 applicant shall be allowed to identify a mortgagee listed on a mortgage for
34 the real property described in the application.

35 (h) The commissioner may adopt rules and regulations to allow
36 suspension or modification of the requirement of filing and approval of
37 rates as to any kind of insurance, subdivision or combination thereof, or
38 as to classes of risks, the rates for which cannot practicably be filed before
39 they are used.

40 (i) Except for workers compensation and employer's liability line, the
41 following categories of commercial lines risks are considered special risks
42 which are exempt from the filing requirements in this section: (1) Risks
43 that are written on an excess or umbrella basis; (2) commercial risks, or

1 portions thereof, that are not rated according to manuals, rating plans, or
2 schedules including "a" rates; (3) large risks; and (4) special risks
3 designated by the commissioner, including but not limited to risks insured
4 under highly protected risks rating plans, commercial aviation, credit
5 insurance, boiler and machinery, inland marine, fidelity, surety and
6 guarantee bond insurance risks.

7 (j) For the purposes of this subsection, "large risk" means: (1) An
8 insured that has total insured property values of \$5,000,000 or more; (2)
9 an insured that has total annual gross revenues of \$10,000,000 or more; or
10 (3) an insured that has in the preceding calendar year a total paid
11 premium of \$50,000 or more for property insurance, \$50,000 or more for
12 general liability insurance, or \$100,000 or more for multiple lines policies.

13 (k) The exemption for any large risk contained in subsection (h) shall
14 not apply to workers compensation and employer's liability insurance,
15 insurance purchasing groups, and the basic coverage required by K.S.A.
16 40-3401 et seq., and amendments thereto.

17 (l) Underwriting files, premium, loss and expense statistics, financial
18 and other records pertaining to special risks written by any insurer shall
19 be maintained by the insurer and shall be subject to examination by the
20 commissioner.]

21 ~~Section 1. Sec. 2.~~ [3.] K.S.A. 40-2109 is hereby amended to read as
22 follows: 40-2109. Every insurer undertaking to transact in this state the
23 business of either workers compensation or employer's liability insurance or
24 both, and every rating organization which files rates for such insurance shall
25 cooperate in the preparation and submission to the commissioner of insurance
26 of a plan or plans, for the equitable apportionment among insurers of
27 applicants for insurance who are in good faith, entitled to but who are unable
28 to procure through ordinary methods, such insurance. Such plan or plans shall
29 provide:

30 (a) Reasonable rules governing the equitable distribution of risks by
31 direct insurance, reinsurance or otherwise and their assignment to insurers;

32 (b) rates and rate modifications applicable to such risks which shall be
33 reasonable, adequate and not unfairly discriminatory;

34 (c) a method whereby applicants for insurance, insured and insurers may
35 have a hearing on grievances and the right of appeal to the commissioner;

36 (d) for every such plan or plans, there shall be a governing board to be
37 appointed by the commissioner of insurance which shall meet at least annually
38 to review and prescribe operating rules, and which shall consist of the
39 following members:

40 (1) Seven members who shall be appointed as follows: Three of such
41 members shall be representatives of foreign insurance companies, two
42 members shall be representatives of domestic insurance companies and two
43 members shall be licensed independent insurance agents. Such members shall

1 be appointed for a term of three years, except that the initial appointment shall
2 include two members appointed for a two-year term and two members
3 appointed for a one-year term, as designated by the commissioner; and

4 (2) Two members representative of the general public interest with such
5 members to be appointed for a term of two years.

6 The commissioner shall review the plan as soon as reasonably possible
7 after filing in order to determine whether it meets the requirements set forth in
8 subsections (a) and (c) above. As soon as reasonably possible after the plan has
9 been filed the commissioner shall in writing approve or disapprove the same,
10 except that any plan shall be deemed approved unless disapproved within 45
11 days. Subsequent to the waiting period the commissioner may disapprove any
12 plan on the ground that it does not meet the requirements set forth in
13 subsections (a), (b) and (c) above, but only after a hearing held upon not less
14 than 10 days' written notice to every insurer and rating organization affected
15 specifying the matter to be considered at such hearing, and only by an order
16 specifying in what respect the commissioner finds that such plan fails to meet
17 such requirements and stating when within a reasonable period thereafter such
18 plan shall be deemed no longer effective. Such order shall not affect any
19 assignment made or policy issued or made prior to the expiration of the period
20 set forth in such order. Amendments to such plan or plans shall be prepared,
21 and filed and reviewed in the same manner as herein provided with respect to
22 the original plan or plans.

23 If no plan meeting the standards set forth in subsections (a), (b) and (c) is
24 submitted to the commissioner within the period stated in any order,
25 disapproving an existing plan the commissioner shall, if necessary to carry out
26 the purpose of this section after hearing, prepare and promulgate a plan
27 meeting such requirements. When such plan or plans or amendments thereto
28 have been approved or promulgated, no insurer shall thereafter issue a policy
29 of workers compensation or employer's liability insurance or undertake to
30 transact such business in this state unless such insurer shall participate in such
31 an approved or promulgated plan. If, after a hearing conducted in accordance
32 with the provisions of the Kansas administrative procedure act, the
33 commissioner finds that any activity or practice of any insurer or rating
34 organization in connection with the operation of such plan or plans is unfair or
35 unreasonable or otherwise inconsistent with the provisions of this section the
36 commissioner may issue a written order specifying in what respects such
37 activity or practice is unfair or unreasonable or otherwise inconsistent with the
38 provisions of this section and requiring discontinuance of such activity or
39 practice.

40 (e) The commissioner shall approve rates and rate modifications for each
41 plan that provides workers compensation insurance ~~pursuant to this section~~
42 ~~which, over a period of time, but no later than January 1, 1997, will reduce the~~
43 ~~assessments levied by the plan to less than 10%. If the commissioner finds~~

1 that the percentage of the total Kansas workers compensation premium volume
2 written by the plan has not decreased below 20% of the total amount of such
3 premium volume by December 31, 1998, the provisions of this subsection
4 shall no longer apply and the commissioner may cause the governing board of
5 the plan to file new rates and rate modifications pursuant to this section.
6 Notwithstanding the foregoing provisions of this subsection, the commissioner
7 shall not approve rates or rating plans which produce rates or premiums for
8 risks with less than \$2,250 annual premium that are higher than those which
9 would be applied to such risks in the voluntary market, except that this. *This*
10 provision shall not prohibit the application of surcharges, experience
11 modifications or other rating variables based on the claims experience of
12 individual risks.

13 ~~Sec. 2-3.~~ **[4.]** K.S.A. 40-2109 is and **K.S.A. 2010 Supp. 40-955** are
14 hereby repealed.

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