

As Amended by Senate Committee

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

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-**
4 **954 and 40-2109 and K.S.A. 2010 Supp. 40-955** and repealing the
5 existing ~~section~~ **sections**.
6

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

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

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

28 [(c) Notwithstanding the provisions of K.S.A. 44-575, and
29 amendments thereto, if the state fair board enters into a contract for
30 the purchase of workers compensation insurance as described in
31 subsection (a), the state workers compensation self-insurance fund
32 shall not be liable for any compensation claims under the workers

1 compensation act relating to the state fair board and arising during
 2 the term of such] [contract, or for any other amounts otherwise
 3 required to be paid under the workers compensation act during the
 4 term of such contract.]

5 [(d) The state fair board shall notify the secretary of
 6 administration and the Kansas health policy authority of the effective
 7 date of any workers compensation policy acquired pursuant to this
 8 section.]

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

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

35 (c) Any rate filing for the basic coverage required by K.S.A. 40-
 36 3401 et seq., and amendments thereto, loss costs filings for workers
 37 compensation, and rates for assigned risk plans established by article
 38 21 of chapter 40 of the Kansas Statutes Annotated, *and amendments*
 39 *thereto*, or rules and regulations established by the commissioner shall
 40 require approval by the commissioner before its use by the insurer in
 41 this state. As soon as reasonably possible after such filing has been
 42 made, the commissioner shall in writing approve or disapprove the
 43 same, except that any filing shall be deemed approved unless

1 disapproved within 30 days of receipt of the filing.

2 (d) Any other rate filing, except personal lines filings, shall
3 become effective on filing or any prospective date selected by the
4 insurer, subject to the commissioner disapproving the same if the rates
5 are determined to be inadequate, excessive, unfairly discriminatory or
6 otherwise fails to meet the requirements of this act. ~~Subject to the~~
7 ~~provisions of K.S.A. 40-954, and amendments thereto, an insurer may file~~
8 ~~up to four workers compensation loss cost multipliers and up to four~~
9 ~~policy holder dividend plans within a single insurer. Eligibility for~~
10 ~~individual loss cost multipliers and dividend plans shall be based on~~
11 ~~insurer underwriting criteria and judgment.~~ Personal lines rate filings
12 shall be on file for a waiting period of 30 days before becoming
13 effective, subject to the commissioner disapproving the same if the
14 rates are determined to be inadequate, excessive, unfairly
15 discriminatory or otherwise fail to meet requirements of this act. The
16 term "personal lines" shall mean insurance for noncommercial
17 automobile, homeowners, dwelling fire-and-renters insurance policies,
18 as defined by the commissioner by rules and regulations. A filing
19 complies with this act unless it is disapproved by the commissioner
20 within the waiting period or pursuant to subsection (f).

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

27 (f) (1) (A) If a filing is not accompanied by the information
28 required by this act, the commissioner shall promptly inform the
29 company or organization making the filing. The filing shall be deemed
30 to be complete when the required information is received by the
31 commissioner or the company or organization certifies to the
32 commissioner the information requested is not maintained by the
33 company or organization and cannot be obtained.

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

39 (C) If at any time after a filing becomes effective, the
40 commissioner finds a filing does not comply with this act, the
41 commissioner shall after a hearing held on not less than 10 days'
42 written notice to every insurer and rating organization that made the
43 filing issue an order specifying in what respects the filing failed to

1 comply with the act, and stating when, within a reasonable period
2 thereafter, the filing shall be no longer effective. Copies of the order
3 shall be sent to such insurer or rating organization. The order shall
4 not affect any contract or policy made or issued prior to the expiration
5 of the period set forth in the order.

6 (2) (A) In the event an insurer or organization has no legally
7 effective rate because of an order disapproving rates, the
8 commissioner shall specify an interim rate at the time the order is
9 issued. The interim rate may be modified by the commissioner on the
10 commissioner's own motion or upon motion of an insurer or
11 organization.

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

15 (C) When the rates are finally determined, the commissioner
16 shall order any overcharge in the interim rates to be distributed
17 appropriately, except refunds to policyholders the commissioner
18 determines are de minimis may not be required.

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

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

32 (C) Every rating organization receiving a notice of hearing or
33 copy of an order under this section, shall promptly notify all its
34 members or subscribers affected by the hearing or order. Notice to a
35 rating organization of a hearing or order shall be deemed notice to its
36 members or subscribers.

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

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

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

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

9 (i) Except for workers compensation and employer's liability line,
10 the following categories of commercial lines risks are considered
11 special risks which are exempt from the filing requirements in this
12 section: (1) Risks that are written on an excess or umbrella basis; (2)
13 commercial risks, or portions thereof, that are not rated according to
14 manuals, rating plans, or schedules including "a" rates; (3) large
15 risks; and (4) special risks designated by the commissioner, including
16 but not limited to risks insured under highly protected risks rating
17 plans, commercial aviation, credit insurance, boiler and machinery,
18 inland marine, fidelity, surety and guarantee bond insurance risks.

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

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

30 (l) Underwriting files, premium, loss and expense statistics,
31 financial and other records pertaining to special risks written by any
32 insurer shall be maintained by the insurer and shall be subject to
33 examination by the commissioner.]

34 (m) (1) *Any entity that purchases a workers compensation policy for*
35 *the covered employees of more than one employer pursuant to a shared*
36 *employment relationship with each employer must purchase the workers*
37 *compensation policy on a separate multiple coordinate policy basis.*
38 *Such workers compensation policies must be issued pursuant to K.S.A.*
39 *44-501 et seq., and amendments thereto, from an insurer holding a*
40 *certificate of authority to do business in this state and providing workers*
41 *compensation coverage.*

42 (2) *The commissioner of insurance shall be authorized to adopt*
43 *such rules and regulation as are reasonable and necessary to carry out*

1 *the purpose and the provisions of this subsection.*

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

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

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

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

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

22 (1) Seven members who shall be appointed as follows: Three of such
23 members shall be representatives of foreign insurance companies, two
24 members shall be representatives of domestic insurance companies and
25 two members shall be licensed independent insurance agents. Such
26 members shall be appointed for a term of three years, except that the initial
27 appointment shall include two members appointed for a two-year term and
28 two members appointed for a one-year term, as designated by the
29 commissioner; and

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

32 The commissioner shall review the plan as soon as reasonably possible
33 after filing in order to determine whether it meets the requirements set
34 forth in subsections (a) and (c) above. As soon as reasonably possible after
35 the plan has been filed the commissioner shall in writing approve or
36 disapprove the same, except that any plan shall be deemed approved
37 unless disapproved within 45 days. Subsequent to the waiting period the
38 commissioner may disapprove any plan on the ground that it does not meet
39 the requirements set forth in subsections (a), (b) and (c) above, but only
40 after a hearing held upon not less than 10 days' written notice to every
41 insurer and rating organization affected specifying the matter to be
42 considered at such hearing, and only by an order specifying in what
43 respect the commissioner finds that such plan fails to meet such

1 requirements and stating when within a reasonable period thereafter such
2 plan shall be deemed no longer effective. Such order shall not affect any
3 assignment made or policy issued or made prior to the expiration of the
4 period set forth in such order. Amendments to such plan or plans shall be
5 prepared, and filed and reviewed in the same manner as herein provided
6 with respect to the original plan or plans.

7 If no plan meeting the standards set forth in subsections (a), (b) and (c)
8 is submitted to the commissioner within the period stated in any order,
9 disapproving an existing plan the commissioner shall, if necessary to carry
10 out the purpose of this section after hearing, prepare and promulgate a plan
11 meeting such requirements. When such plan or plans or amendments
12 thereto have been approved or promulgated, no insurer shall thereafter
13 issue a policy of workers compensation or employer's liability insurance or
14 undertake to transact such business in this state unless such insurer shall
15 participate in such an approved or promulgated plan. If, after a hearing
16 conducted in accordance with the provisions of the Kansas administrative
17 procedure act, the commissioner finds that any activity or practice of any
18 insurer or rating organization in connection with the operation of such plan
19 or plans is unfair or unreasonable or otherwise inconsistent with the
20 provisions of this section the commissioner may issue a written order
21 specifying in what respects such activity or practice is unfair or
22 unreasonable or otherwise inconsistent with the provisions of this section
23 and requiring discontinuance of such activity or practice.

24 (e) ~~The commissioner shall approve rates and rate modifications for~~
25 ~~each plan that provides workers compensation insurance pursuant to this~~
26 ~~section which, over a period of time, but no later than January 1, 1997,~~
27 ~~will reduce the assessments levied by the plan to less than 10%. If the~~
28 ~~commissioner finds that the percentage of the total Kansas workers~~
29 ~~compensation premium volume written by the plan has not decreased~~
30 ~~below 20% of the total amount of such premium volume by December 31,~~
31 ~~1998, the provisions of this subsection shall no longer apply and the~~
32 ~~commissioner may cause the governing board of the plan to file new rates~~
33 ~~and rate modifications pursuant to this section. Notwithstanding the~~
34 ~~foregoing provisions of this subsection, the commissioner shall not~~
35 ~~approve rates or rating plans which produce rates or premiums for risks~~
36 ~~with less than \$2,250 annual premium that are higher than those which~~
37 ~~would be applied to such risks in the voluntary market, except that this.~~
38 ~~This provision shall not prohibit the application of surcharges, experience~~
39 ~~modifications or other rating variables based on the claims experience of~~
40 ~~individual risks.~~

41 ***Sec. 4. K.S.A. 40-954 is hereby amended to read as follows: 40-954.***
42 ***In determining whether rates are not excessive or inadequate or not***
43 ***unfairly discriminatory:***

1 (a) *Due consideration shall be given to:*

2 (1) *Past and prospective loss and expense experience within and*
3 *outside the state;*

4 (2) *catastrophe hazards and contingencies;*

5 (3) *trends within and outside this state;*

6 (4) *loadings for leveling premium rates over time;*

7 (5) *dividends, savings or unabsorbed premium deposits allowed or*
8 *returned by insurers to their policyholders, members, or subscribers and*
9 *the investment income of the insurer; and*

10 (6) *all other relevant factors within and outside the state, including*
11 *the judgment of technical personnel.*

12 (b) *The expense provisions included in the rates to be used by an*
13 *insurer may reflect the operating methods of the insurer, or group of*
14 *insurers, and, so far as it is credible, its own expense experience.*

15 (c) *Risks may be classified in any reasonable way for the*
16 *establishment of rates and minimum premiums, except that no*
17 *classification may be based on race, color, creed or national origin and*
18 *classifications in automobile insurance may not be based on physical*
19 *disability of an insured. Rates thus produced may be modified for*
20 *individual risks in accordance with rating plans, schedules, except for*
21 *workers compensation, individual risk premium modification plans and*
22 *expense reduction plans that establish reasonable standards for*
23 *measuring probable variations in experience, hazards, expenses or any*
24 *combination of those factors.*

25 *Such standards shall permit recognition of expected differences in*
26 *loss or expense characteristics, and shall be designed so that such plans*
27 *are reasonable and equitable in their application, and are not unfairly*
28 *discriminatory, violative of public policy or otherwise contrary to the best*
29 *interests of the people of this state. This section shall not prevent the*
30 *development of new or innovative rating methods which otherwise*
31 *comply with this act.*

32 (d) *Rates may be modified for individual risks, upon written*
33 *application of the insured, stating the insured's reasons therefore, filed*
34 *with and not disapproved by the commissioner within 10 days after*
35 *filings.*

36 (e) *The rates may contain provisions for contingencies and an*
37 *allowance permitting a reasonable profit. In determining the*
38 *reasonableness of the profit, consideration shall be given to the*
39 *investment income attributable to the line of insurance.*

40 (f) *The commissioner may by rule exempt any person or class of*
41 *persons, line of insurance, or any market segment from any or all of the*
42 *provisions of this chapter, if and to the extent that the commissioner*
43 *finds their application unnecessary to achieve the purposes of this act.*

1 *(g) Once it has been filed, use of any rating plan shall be*
2 *mandatory and such plan shall be applied uniformly for eligible risks in*
3 *a manner that is not unfairly discriminatory.*

4 ~~Sec. 2-3-4.~~ 5. K.S.A. ~~40-954~~ and 40-2109 is and K.S.A. 2010
5 **Supp. 40-955** are hereby repealed.

6 ~~Sec. 3-4-5.~~ 6. This act shall take effect and be in force from and
7 after its publication in the statute book.