

2012 Kansas Statutes

40-3413. Apportionment of risk among insurers; preparation of plan; contents; approval or disapproval; amendment; preparation by commissioner of insurance, when; order to discontinue unfair or unreasonable activities or activities inconsistent with act; governing board, membership; commissions on insurance written under plan. (a) Every insurer and every rating organization shall cooperate in the preparation of a plan or plans for the equitable apportionment among such insurers of applicants for professional liability insurance and such other liability insurance as may be included in or added to the plan, who are in good faith entitled to such insurance but are unable to procure the same through ordinary methods. Such plan or plans shall be prepared and filed with the commissioner and the board of governors within a reasonable time but not exceeding 60 calendar days from the effective date of this act. Such plan or plans shall provide:

(1) Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise including the authority to make assessments against the insurers participating in the plan or plans;

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

(3) a method whereby periodically the plan shall compare the premiums earned to the losses and expenses sustained by the plan. If there is any surplus of premiums over losses and expenses received for that year such surplus shall be transferred to the fund. If there is any excess of losses and expenses over premiums earned such losses shall be transferred from the fund, however such transfers shall not occur more often than once each three months;

(4) the limits of liability which the plan shall be required to provide, but in no event shall such limits be less than those limits provided for in subsection (a) of K.S.A. 40-3402 and amendments thereto;

(5) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner.

(b) The commissioner and board of governors shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection (a). As soon as reasonably possible after the plan has been filed the commissioner, consistent with the recommendations of the board of governors, shall in writing approve or disapprove the plan. Any plan shall be deemed approved unless disapproved within 30 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsection (a), but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in the order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

(c) If no plan meeting the standards set forth in subsection (a) is submitted to the commissioner and board of governors within 60 calendar days from the effective date of this act or within the period stated in any order disapproving an existing plan, the commissioner with the assistance of the board of governors shall after a hearing, if necessary to carry out the purpose of this act, prepare and promulgate a plan meeting such requirements.

(d) If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner and board of governors find that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this act, the commissioner and board of governors may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring discontinuance of such activity or practice.

(e) For every such plan or plans, there shall be a governing board which shall meet at least annually to review and prescribe operating rules. Such board shall consist of nine members to be appointed by the commissioner as follows: Three members shall be representatives of foreign insurers, two members shall be representatives of domestic insurers, two members shall be representatives of the general public, one member shall be a licensed insurance agent actively engaged in the solicitation of casualty insurance and one member shall be a health care provider. The members shall be appointed for a term of two years.

(f) An insurer participating in the plan approved by the commissioner may pay a commission with respect to insurance written under the plan to an insurance agent licensed for any other insurer participating in the plan or to any insurer participating in the plan. Such commission shall be reasonably equivalent to the usual customary commission paid on similar types of policies issued in the voluntary market.

History: L. 1976, ch. 231, § 13; L. 1977, ch. 166, § 1; L. 1980, ch. 144, § 1; L. 1982, ch. 208, § 1; L. 1984, ch. 178, § 2; L. 1987, ch. 179, § 1; L. 1988, ch. 356, § 124; L. 1989, ch. 144, § 1; L. 1992, ch. 23, § 2; L. 1995, ch. 145, § 5; July 1.