

Substitute for SENATE BILL No. 155

By Committee on Financial Institutions and Insurance

2-12

1 AN ACT concerning insurance; relating to surplus lines coverage; defining
2 terms; relating to gross premiums and tax thereon; nonadmitted insurers
3 authorized to write excess coverage on Kansas risks; amending K.S.A.
4 2014 Supp. 40-246b, 40-246c and 40-246e and repealing the existing
5 sections; also repealing K.S.A. 2014 Supp. 40-5701, 40-5702 and 40-
6 5703.

7

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

9 New Section 1. The following definitions shall apply to K.S.A. 40-
10 246b through 40-246e, and amendments thereto, and section 3, and
11 amendments thereto:

12 (a) "Exempt commercial purchaser" means any person purchasing
13 commercial insurance that, at the time of placement, meets the following
14 requirements:

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

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

20 (3) the person:

21 (A) Possesses a net worth in excess of \$20,040,000, except that this
22 amount shall be adjusted every five years by rules and regulations of the
23 commissioner of insurance to account for the percentage change in the
24 consumer price index;

25 (B) generates annual revenues in excess of \$55,100,000, except that
26 this amount shall be adjusted every five years by rules and regulations of
27 the commissioner of insurance to account for the percentage change in the
28 consumer price index;

29 (C) employs more than 500 full-time or full-time-equivalent
30 employees per insured entity or is a member of an affiliated group
31 employing more than 1,000 employees in the aggregate;

32 (D) is a not-for-profit organization or public entity generating annual
33 budgeted expenditures of at least \$33,060,000, except that this amount
34 shall be adjusted every five years by rules and regulations of the
35 commissioner of insurance to account for the percentage change in the
36 consumer price index; or

1 (E) is a municipality with a population in excess of 50,000 persons.

2 (b) "Home state" (1) In general, except as provided in subparagraph
3 (2), the term "home state" means, with respect to an insured:

4 (A) The state in which an insured maintains its principal place of
5 business or, in the case of an individual, the individual's principal
6 residence; or

7 (B) if 100% of the insured risk is located out of the state referred to in
8 paragraph (1)(A), the state to which the greatest percentage of the insured's
9 taxable premium for that insurance contract is allocated.

10 (2) Affiliated groups. If more than one insured from an affiliated
11 group are named insureds on a single non-admitted insurance contract, the
12 term "home state" means the home state, as determined pursuant to
13 paragraph (1), of the member of the affiliated group that has the largest
14 percentage of premium attributed to it under such insurance contract.

15 (c) "Nonadmitted insurer" means an insurer that is not authorized or
16 admitted to transact the business of insurance under the law of the home
17 state, but does not include a risk retention group as that term is defined in
18 15 U.S.C. § 3901(a)(4), as in effect on July 1, 2015.

19 (d) "Principal place of business" means, with respect to determining
20 the home state of the insured, the state where the insured maintains its
21 headquarters and where the insured's high-level officers direct, control and
22 coordinate the business activities of the insured.

23 (e) "Surplus lines insurance" means insurance procured by a surplus
24 lines licensee from a surplus lines insurer as permitted under the law of the
25 home state. "Surplus lines insurance" shall also mean excess lines
26 insurance as may be defined by applicable state law.

27 Sec. 2. K.S.A. 2014 Supp. 40-246c is hereby amended to read as
28 follows: 40-246c. (a) On March 1 of each year, each licensed agent shall
29 collect and pay to the commissioner a ~~sum-based tax of 6%~~ on the total
30 gross premiums charged, less any return premiums, for surplus lines
31 insurance ~~provided transacted~~ by the licensee pursuant to the license.
32 ~~Where the insurance covers properties, risks or exposures located or to be~~
33 ~~performed both in and out of this state, the sum payable shall be computed~~
34 ~~based on:~~

35 (1) ~~An amount equal to 6% of that portion of the gross premiums~~
36 ~~allocated to this state; plus~~

37 (2) ~~an amount equal to the portion of the premiums allocated to other~~
38 ~~states or territories on the basis of the tax rates and fees applicable to~~
39 ~~properties, risks or exposures located or to be performed outside of this~~
40 ~~state; less~~

41 (3) ~~the amount of gross premiums allocated to this state and returned~~
42 ~~to the insured for insureds whose home state is this state.~~

43 (b) The tax on any portion of the premium unearned at termination of

1 insurance, if any, having been credited by the state to the licensee shall be
2 returned to the policyholder directly by the surplus lines licensee or
3 through the producing broker. The surplus lines licensee is prohibited from
4 rebating any part of the tax for any reason. ~~To the extent that other states
5 where portions of the properties, risks or exposures reside have failed to
6 enter into a compact or reciprocal allocation procedure with this state, the
7 net premium tax collected shall be retained by this state.~~

8 (c) The individual responsible for filing the statement shall be the
9 agent who signs the policy or the agent of record with the company. The
10 commissioner of insurance shall collect double the amount of tax herein
11 provided from any licensee or other responsible individual as herein
12 described who shall fail, refuse or neglect to transmit the required affidavit
13 or statement or shall fail to pay the tax imposed by this section, to the
14 commissioner within the period specified.

15 New Sec. 3. A surplus lines producer seeking to place non-admitted
16 insurance for an exempt commercial purchaser is not required to file the
17 signed statement under K.S.A. 40-246b, and amendments thereto, if the
18 surplus lines producer has disclosed to the exempt commercial purchaser
19 that such insurance may or may not be available from the admitted market
20 that may provide greater protection with more regulatory oversight and the
21 exempt commercial purchaser has subsequently requested in writing the
22 surplus lines producer to procure or place such insurance from a
23 nonadmitted insurer.

24 Sec. 4. K.S.A. 2014 Supp. 40-246b is hereby amended to read as
25 follows: 40-246b. (a) Upon receipt of a proper application, the
26 commissioner of insurance may issue an excess lines coverage license to
27 any licensed property and casualty agent of this state or any other state.
28 Any agent so licensed may negotiate for insureds whose home state is this
29 state, the types of contracts of fire insurance enumerated in K.S.A. 40-901,
30 and amendments thereto, and the type of casualty insurance contracts
31 enumerated in K.S.A. 40-1102, and amendments thereto, or reinsurance, or
32 to place risks, or to effect insurance or reinsurance for persons or
33 corporations other than such agent, with insurers not authorized to do
34 business in this state. An agent, as defined in K.S.A. 2014 Supp. 40-4902,
35 and amendments thereto, may place the kind or kinds of business specified
36 in this act for which such agent is licensed pursuant to K.S.A. 2014 Supp.
37 40-4903 and ~~subsection (d) of 40-4906(d)~~, and amendments thereto, with
38 an insurer not authorized to do business in this state by placing such
39 business with a person licensed pursuant to the provisions of this act and
40 may share in the applicable commissions on such business. Before any
41 such license shall be issued, the applicant shall submit proper application
42 on a form prescribed by the commissioner, which application shall be
43 accompanied by a fee of \$50. Such license shall be renewable each year on

1 May 1, upon the payment of a \$50 fee.

2 (b) The agent so licensed shall ~~on or before March 1 of each year, file~~
3 ~~with the insurance department of this state, a sworn affidavit or~~ *maintain,*
4 *available to the insurance department of this state upon request, a signed*
5 *statement to the effect that, after diligent effort, such agent has been unable*
6 *to secure the amount of insurance required to protect the property, person,*
7 *or firm described in such agent's* ~~affidavit or~~ *statement from loss or*
8 *damage in regularly admitted companies during the preceding year. Mere*
9 *rate differential shall not be grounds for placing a particular risk in a*
10 *nonadmitted carrier when an admitted carrier would accept such risk at a*
11 *different rate. The licensed excess coverage agent must, prior to placing*
12 *insurance with an insurer not authorized to do business in this state, obtain*
13 *the written consent of the prospective named insured and provide such*
14 *insured the following information in a form promulgated by the*
15 *commissioner:*

16 (1) A statement that the coverage will be obtained from an insurer not
17 authorized to do business in this state;

18 ~~(2) a statement that the insurer's name appears on the list of~~
19 ~~companies maintained by the commissioner, but that meets the~~
20 ~~requirements to be eligible to write excess coverage on risks where Kansas~~
21 ~~is the home state of the insured pursuant to K.S.A. 40-246e, and~~
22 ~~amendments thereto;~~

23 ~~(3) (2) a notice that the insurer's financial condition, policy forms,~~
24 ~~rates and trade practices are not subject to the review or jurisdiction of the~~
25 ~~commissioner;~~

26 ~~(4) (3) a statement that the protection of the guaranty associations is~~
27 ~~not afforded to policyholders of the insurer; and~~

28 ~~(5) (4) a statement or notice with respect to any other information~~
29 ~~deemed necessary by the commissioner pertinent to insuring with an~~
30 ~~insurer not authorized to do business in this state.~~

31 (c) In the event the insured desires that coverage be bound with an
32 insurer not admitted to this state and it is not possible to obtain the written
33 consent of the insured prior to binding the coverage, the excess lines agent
34 may bind the coverage after advising the insured of the information set out
35 above and shall obtain written confirmation that the insured desires that
36 coverage be placed with an insurer not admitted to this state within 30
37 days after binding coverage.

38 (d) When business comes to a licensed excess lines agent in which
39 this state is the home state for placement with an insurer not authorized to
40 do business in this state from an agent not licensed as an excess lines
41 agent, it shall be the responsibility of the licensed excess lines agent to
42 ascertain that the insured has been provided the preceding information and
43 has consented to being insured with an insurer not authorized to do

1 business in this state. Each excess lines agent shall keep a separate record
2 book in such agent's office showing the transactions of fire and casualty
3 insurance and reinsurance placed in companies not authorized to do
4 business in this state, the amount of gross premiums charged thereon, the
5 insurer with which the policy was placed, the date, term and number of the
6 policy, the location and nature of the risk, the name of the insured and such
7 other information as the commissioner may require and such record shall
8 be available at all times for inspection by the commissioner of insurance or
9 the commissioner's authorized representatives. The commissioner may
10 revoke or suspend any license issued pursuant to the provisions of this act
11 in the same manner and for the same reasons prescribed by K.S.A. 2014
12 Supp. 40-4909, and amendments thereto.

13 Any policy issued under the provisions of this statute shall have
14 stamped or endorsed in a prominent manner thereon, the following: This
15 policy is issued by an insurer not authorized to do business in Kansas and,
16 as such, the form, financial condition and rates are not subject to review by
17 the commissioner of insurance and the insured is not protected by any
18 guaranty fund.

19 If business is placed with a nonadmitted company that is subsequently
20 determined to be insolvent, the excess lines agent placing such business
21 with such company is relieved of any responsibility to the insured as it
22 relates to such insolvency, if the excess lines agent has satisfactorily
23 complied with all requirements of this section pertaining to notification of
24 the insured, has properly obtained the written consent of the insured and
25 has used due diligence in selecting the insurer. It shall be presumed that
26 due diligence was used in selecting the insurer if such insurer ~~was on the~~
27 ~~list compiled pursuant to~~ *satisfies the requirements of* K.S.A. 40-246e, and
28 amendments thereto, at the time coverage first became effective.

29 Sec. 5. K.S.A. 2014 Supp. 40-246e is hereby amended to read as
30 follows: 40-246e. *(a) When Kansas is the home state of the insured, a*
31 *licensed excess lines agent shall not place coverage with a nonadmitted*
32 *insurer, unless, at the time of placement, the agent has determined that the*
33 *nonadmitted insurer:*

34 *(1) (A) Is authorized to write the kind of insurance in its domiciliary*
35 *jurisdiction in the United States; and (B) has capital and surplus or its*
36 *equivalent under the laws of its domiciliary jurisdiction in the United*
37 *States, which equals the greater of the minimum capital and surplus*
38 *requirements under the laws of this state or \$15,000,000, except that an*
39 *insurer may possess less than such capital and surplus amount upon an*
40 *affirmative finding of acceptability by the commissioner, provided that the*
41 *finding shall be based upon such factors as quality of management, capital*
42 *and surplus of any parent company, company underwriting profit and*
43 *investment income trends, market availability and company record and*

1 *reputation within the industry, and in no event shall the director make an*
2 *affirmative finding of acceptability when the nonadmitted insurer's capital*
3 *and surplus is less than \$4,500,000;*

4 (2) *appears on the most recent quarterly listing of alien insurers*
5 *maintained by the international insurers department (IID) of the national*
6 *association of insurance commissioners (NAIC) (the "NAIC-IID list");*

7 (3) *if an insurer domiciled outside the United States that is not on the*
8 *most recent NAIC-IID list satisfies requirements that the commissioner is*
9 *hereby authorized to adopt by rules and regulations; or*

10 (4) *if an insurance exchange that issues contracts on behalf of its*
11 *members, the exchange's individual members have capital or surplus*
12 *equal to or in excess of \$1,500,000 and the aggregate capital or surplus of*
13 *all members of the exchange is at least \$15,000,000.*

14 (b) ~~The commissioner shall~~ *may maintain a list of nonadmitted*
15 ~~insurers not authorized to do business eligible to write excess coverage in~~
16 ~~this state under subsection (a) for review by any interested person. Only~~
17 ~~those insurers who have filed~~ *In order to be included on any such list,*
18 *insurers domiciled in the United States must file a certified copy of their*
19 *most recent annual statement with the commissioner in the form*
20 *prescribed by K.S.A. 40-225, and amendments thereto, or, if along with a*
21 *certified copy of their certificate of authority from their state of domicile.*
22 *The commissioner shall include on any such list all insurers domiciled*
23 ~~outside the United States; have filed their most recent annual statement~~
24 ~~with the national association of insurance commissioners may appear on~~
25 ~~the list. No excess lines agent shall place insurance on a Kansas domiciled~~
26 ~~risk with an insurer whose name does not appear on this list. No company~~
27 ~~shall appear on the list whose capital or surplus as shown on the annual~~
28 ~~statement does not equal or exceed \$4,500,000. Individual unincorporated~~
29 ~~insurers not listed by the national association of insurance commissioners~~
30 ~~may appear on the list if they are authorized to transact an insurance~~
31 ~~business in at least one state of the United States, possess assets which are~~
32 ~~held in trust for the benefit of American policyholders in the sum of not~~
33 ~~less than \$50,000,000 and pay the filing fee required by this section.~~
34 ~~Insurance exchanges who issue contracts on behalf of their members and~~
35 ~~pay the filing fee required by this section may appear on the list if their~~
36 ~~individual members have a capital or surplus equal to or in excess of~~
37 ~~\$1,500,000 and the aggregate capital or surplus of all members of the~~
38 ~~exchange is at least \$15,000,000 that appear on the most recent NAIC-IID~~
39 ~~list. A nonrefundable filing fee of \$200 shall be required of any insurer~~
40 ~~submitting its annual statement for review by the commissioner for~~
41 ~~seeking inclusion on such list.~~

42 (c) *The commissioner shall remove an insurer's name from the listing*
43 *only when: (a) (1) The insurer requests such removal; or (b) (2) the insurer*

1 fails to file its latest annual statement and required filing fee prior to May
2 1 of each year as required by this section; ~~or (e) (3) the commissioner is~~
3 notified by the insurance supervisory authority of any state of the United
4 States that such insurer has had its authority to transact business restricted;
5 or has been declared insolvent or placed in receivership, conservatorship,
6 rehabilitation or any similar status wherein the business of the insurer is
7 formally supervised by an insurance supervisory authority; ~~or (d) (4) the~~
8 commissioner is notified by the ~~N.A.I.C.~~ NAIC that any insurer domiciled
9 outside the United States has been declared insolvent or placed in
10 receivership, conservatorship, rehabilitation or any similar status wherein
11 the business of the insurer is formally supervised by an insurance
12 supervisory authority pursuant to an order by any court of competent
13 jurisdiction; ~~or (e) (5) the insurer has failed to effectuate reasonably~~
14 prompt, fair and equitable payment of just losses and claims in this state;
15 or ~~(f) (6) the insurer encourages, promotes or rewards an agent to violate~~
16 the provisions of K.S.A. 40-246b, and amendments thereto. There shall be
17 no liability on the part of and no cause of action of any nature shall arise
18 against the commissioner, the commissioner's employees, or the state of
19 Kansas as a result of any insurer's name appearing or not appearing on the
20 list required by this section if such list is constructed and maintained in
21 good faith and without malice.

22 Sec. 6. K.S.A. 2014 Supp. 40-246b, 40-246c, 40-246e, 40-5701, 40-
23 5702 and 40-5703 are hereby repealed.

24 Sec. 7. This act shall take effect and be in force from and after its
25 publication in the statute book.