

HOUSE BILL No. 2184

By Representative Carter

1-26

9 AN ACT concerning insurance; enacting the property/casualty modern-
10 ization act; amending K.S.A. 40-952 and 40-955 and repealing the ex-
11 isting sections.

12

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

14 New Section 1. For the purposes of this act: (a) “Advisory organi-
15 zation” means any person or organization, which has five unrelated mem-
16 bers and which assists insurers as authorized by section 9 and amend-
17 ments thereto. Advisory organization does not include any joint
18 underwriting organization, actuarial or legal consultant, single insurer, any
19 employee of an insurer, or insurers under common control or manage-
20 ment of their employees or managers.

21 (b) “Classification system” or “classification” means the process of
22 grouping risks with similar risk characteristics so that differences in costs
23 may be recognized.

24 (c) “Commercial risk” means any kind of risk, which is not a personal
25 risk.

26 (d) “Commissioner” means the commissioner of insurance.

27 (e) “Competitive market” means any market except those which have
28 been found to be noncompetitive pursuant to section 3 and amendments
29 thereto.

30 (f) “Developed losses” means losses (including loss adjustment ex-
31 penses) adjusted, using standard actuarial techniques, to eliminate the
32 effect of differences between current payment or reserve estimates and
33 those which are anticipated to provide actual ultimate loss (including loss
34 adjustment expense) payments.

35 (g) “Expenses” means that portion of a rate attributable to acquisi-
36 tion, field supervision, collection expenses, general expenses, taxes, li-
37 censes and fees.

38 (h) “Experience rating” means a rating procedure utilizing past in-
39 surance experience of the individual policyholder to forecast future losses
40 by measuring the policyholder’s loss experience against the loss experi-
41 ence of policyholders in the same classification to produce a prospective
42 premium credit, debit or unity modification.

43 (i) “Joint underwriting” means an arrangement established to provide

- 1 insurance coverage for a risk, pursuant to which two or more insurers
2 contract with the insured for a price and policy terms agreed upon be-
3 tween or among the insurers.
- 4 (j) “Special risk” means one of the following categories of commercial
5 risk:
- 6 (1) Risks that are written on an excess or umbrella basis;
 - 7 (2) commercial risks, or portions thereof, that are not rated according
8 to manuals, rating plans, or schedules including “a” rates;
 - 9 (3) large risks; and
 - 10 (4) risks designated by the commissioner, including but not limited
11 to risks insured under highly protected risks rating plans, commercial
12 aviation, credit insurance, boiler and machinery, inland marine, fidelity
13 surety and guarantee bond insurance risks.
- 14 (k) “Large risk” means:
- 15 (1) An insured that has total insured property values of \$5,000,000
16 or more;
 - 17 (2) an insured that has total annual gross revenues of \$10,000,000 or
18 more; or
 - 19 (3) an insured that has in the preceding calendar year a total paid
20 premium of \$50,000 or more for property insurance, \$50,000 or more for
21 general liability insurance, or \$100,000 or more for multiple lines policies.
- 22 The exemption for any large risk contained in subsection (k) shall not
23 apply to workers compensation and employer’s liability insurance, insur-
24 ance purchasing groups and the basic coverage required by K.S.A. 40-
25 3401 et. seq. and amendments thereto.
- 26 (l) “Loss adjustment expense” means the expenses incurred by the
27 insurer in the course of settling claims.
- 28 (m) “Market” is the statewide interaction between buyers and sellers
29 in the procurement of a line of insurance coverage pursuant to the pro-
30 visions of this act.
- 31 (n) “Noncompetitive market” means a market, which is subject to a
32 ruling pursuant to section 3 that a reasonable degree of competition does
33 not exist. Noncompetitive markets do not include residual markets and
34 pools.
- 35 (o) “Personal risk” means homeowners, tenants, non-fleet private
36 passenger automobiles, mobile homes and other property and casualty
37 insurance for personal, family or household needs. Personal risk includes
38 any property and casualty insurance that is otherwise intended for non-
39 commercial coverage.
- 40 (p) “Pool” means an arrangement pursuant to which two or more
41 insurers participate in the sharing of risks on a predetermined basis. A
42 pool may operate as an association, syndicate or in any other generally
43 recognized manner.

- 1 (q) “Prospective loss cost” means that portion of a rate that does not
2 include provisions for expenses (other than loss adjustment expenses) or
3 profit, and are based on historical aggregate losses and loss adjustment
4 expenses adjusted through development to their ultimate value and pro-
5 jected through trending to a future point in time.
- 6 (r) “Rate” means that cost of insurance per exposure unit whether
7 expressed as a single number or as a prospective loss cost with an ad-
8 justment to account for the treatment of expenses, profit, and individual
9 insurer variation in loss experience, prior to any application of individual
10 risk variations based on loss or expense considerations, and does not in-
11 clude minimum premiums.
- 12 (s) “Residual market mechanism” means an arrangement, either vol-
13 untary or mandated by law, involving participation by insurers in the eq-
14 uitable apportionment of risks among insurers for insurance which may
15 be afforded applicants who are unable to obtain insurance through or-
16 dinary methods.
- 17 (t) “Special assessments” means guaranty fund assessments, special
18 indemnity fund assessments, vocational rehabilitation fund assessments,
19 and other similar assessments. Special assessments shall not be consid-
20 ered as either expenses or losses.
- 21 (u) “Supplementary rate information” means any manual or plan of
22 rates, classification, rating schedule, minimum premium, policy fee, rating
23 rule and any other similar information needed to determine an applicable
24 rate in effect or to be in effect.
- 25 (v) “Supporting information” means:
- 26 (1) The experience and judgment of the filer and the experience or
27 data of other insurers or organizations relied upon by the filer;
28 (2) the interpretation of any statistical data relied upon by the filer;
29 (3) a description of methods used in making the rates; and
30 (4) any other similar information relied upon by the filer.
- 31 (w) “Trending” means any procedure for projecting losses to the av-
32 erage date of loss, or premiums or exposures to the average date of writ-
33 ing, for the period during which the policies are to be effective.
- 34 New Sec. 2. This act applies to all kinds of insurance written on risks
35 in this state by any insurer authorized to do business in this state except:
- 36 (a) Life insurance;
37 (b) annuities;
38 (c) accident and health-insurance;
39 (d) ocean marine insurance;
40 (e) aircraft liability and aircraft hull insurance;
41 (f) reinsurance;
42 (g) surplus lines;
43 (h) workers compensation;

- 1 (i) employer's liability insurance;
2 (j) title insurance; and
3 (k) health care provider insurance required by K.S.A.40-3401 et seq.
4 and amendments thereto.
- 5 New Sec. 3. (a) A competitive market for a line of insurance is pre-
6 sumed to exist unless the commissioner, after notice and opportunity for
7 a hearing in accordance with the Kansas administrative procedures act,
8 determines that a reasonable degree of competition does not exist within
9 a market and issues a ruling to that effect. The burden of proof in any
10 hearing shall be placed on the party or parties advocating the position
11 that competition does not exist. Any ruling that a market is not compet-
12 itive shall identify the factors causing the market not to be competitive.
13 Such ruling shall expire one year after issue unless rescinded earlier by
14 the commissioner or unless the commissioner renews the ruling after a
15 hearing and a finding as to the continued lack of a reasonable degree of
16 competition. Any ruling that renews the finding that competition does
17 not exist shall also identify the factors that cause the market to continue
18 not to be competitive.
- 19 (b) The commissioner shall consider the following factors for pur-
20 poses of determining if a reasonable degree of competition does not exist
21 in a particular line of insurance:
- 22 (1) The number of insurers or groups of affiliated insurers providing
23 coverage in the market;
24 (2) measures of market concentration and changes of market con-
25 centration over time;
26 (3) ease of entry and the existence of financial or economic barriers
27 that could prevent new firms from entering the market;
28 (4) the extent to which any insurer or group of affiliated insurers
29 controls all or a portion of the market;
30 (5) whether the total number of companies writing the line of insur-
31 ance in this state is sufficient to provide multiple options;
32 (6) the availability of insurance coverage to consumers in the markets;
33 and
34 (7) the opportunities available to consumers in the market to acquire
35 pricing and other consumer information.
- 36 (c) The commissioner shall monitor the degree and continued exist-
37 tence of competition in this state on an on-going basis. In doing so, the
38 commissioner may utilize existing relevant information, analytical systems
39 and other sources; or rely on some combination thereof. Such activities
40 may be conducted internally within the insurance department, in coop-
41 eration with other state insurance departments, through outside contrac-
42 tors or in any other manner deemed appropriate by the commissioner.
- 43 New Sec. 4. (a) Rates shall not be excessive, inadequate or unfairly

1 discriminatory.

2 (1) For the purposes of this section:

3 (A) “Excessive” means a rate that is likely to produce a long-term
4 profit that is unreasonably high for the insurance provided. No rate in a
5 competitive market shall be considered excessive.

6 (B) “Inadequate” means a rate which is unreasonably low for the
7 insurance provided and:

8 (i) The continued use of which endangers the solvency of the insurers
9 using such rate; or

10 (ii) which will have the effect of substantially lessening competition
11 or creating a monopoly in any market.

12 (C) “Unfairly discriminatory” refers to rates that cannot be justified
13 actuarially. Unfairly discriminatory does not refer to rates that produce
14 differences in premiums for policyholders with like loss exposures, so long
15 as the rate reflects such differences with reasonable accuracy. A rate is
16 not unfairly discriminatory if it averages broadly among persons insured
17 under a group, franchise or blanket policy, or a mass marketing plan.

18 (2) No rate in a competitive market shall be considered unfairly dis-
19 criminatory unless it violates the provisions of subsection (b) of this sec-
20 tion in that such rate classifies risk, on the basis of race, color, creed or
21 national origin.

22 (3) Risks may be classified in any way except that no risk may be
23 classified on the basis of race, color, creed or national origin.

24 (b) In determining whether rates in a noncompetitive market are ex-
25 cessive, inadequate or unfairly discriminatory, consideration may be given
26 to the following elements:

27 (1) Basic rate factors. Due consideration shall be given to:

28 (A) Past and prospective loss and expense experience within and out-
29 side of this state;

30 (B) catastrophic hazards and contingencies;

31 (C) events or trends within and outside of this state;

32 (D) dividends or savings to policyholders, members or subscribers;
33 and

34 (E) all other factors and judgments deemed relevant by the insurer.

35 (2) Classification. Risks may be grouped by classifications for the es-
36 tablishment of rates and minimum premiums. Classification rates may be
37 modified for individual risks in accordance with rating plans or schedules
38 which establish standards for measuring probable variations in hazards or
39 expenses, or both.

40 (3) Expenses. The expense provision shall reflect the operating meth-
41 ods of the insurer and its own past expense experience and anticipated
42 future expenses.

43 (4) Contingencies and profits. The rates shall contain a provision for

1 contingencies and a provision for a reasonable underwriting profit, and
2 reflect investment income directly attributable to unearned premium and
3 loss reserves.

4 (5) Other relevant factors. Any other factors available at the time of
5 hearing.

6 New Sec. 5. (a) If the commissioner determines that competition
7 does not exist in a market and issues a ruling to that effect pursuant to
8 section 3, and amendments thereto, the rates applicable to insurance sold
9 in that market shall be regulated in accordance with the provisions of
10 section 4 through 7, and amendments thereto, applicable to noncompe-
11 titive markets.

12 (b) Any rate filing in effect at the time the commissioner determines
13 that competition does not exist pursuant to section 3, and amendments
14 thereto, shall be deemed to be in compliance with the laws of this state
15 unless disapproved pursuant to the procedures and rating standards con-
16 tained in sections 4 through 7, and amendments thereto, applicable to
17 non-competitive markets.

18 (c) Any insurer having a rate filing in effect at the time the commis-
19 sioner determines that competition does not exist pursuant to section 3,
20 and amendments thereto, may be required to furnish supporting infor-
21 mation within 30 days of a written request by the commissioner.

22 New Sec. 6. (a) Filings in competitive markets. For personal lines,
23 every insurer shall file with the commissioner all rates and supplementary
24 rate information to be used in this state no later than 30 days after the
25 effective date, provided, that such rates and supplementary rate infor-
26 mation need not be filed for inland marine risks, which by general custom
27 are not written according to manual rules or rating plans. Rates in a
28 competitive market for commercial insurance need not be filed.

29 (b) Filings in noncompetitive markets.

30 (1) Every insurer shall file with the commissioner all rates, supple-
31 mentary rate information and supporting information for noncompetitive
32 markets at least 30 days before the proposed effective date. Within 30
33 days of the receipt of the filing, the commissioner may give written notice
34 that the commissioner needs additional time, not to exceed 30 days from
35 the date of such notice, to consider the filing. Upon written application
36 of the insurer, the commissioner may authorize rates to be effective be-
37 fore the expiration of the waiting period or an extension thereof. A filing
38 shall be deemed to meet the requirements of this act and to become
39 effective unless disapproved pursuant to section 7, and amendments
40 thereto, by the commissioner before the expiration of the waiting period
41 or an extension thereof. Residual market mechanisms or advisory organ-
42 izations may file residual market rates.

43 (2) Unless the commissioner informs the insurer within 10 days after

1 receipt of the filing as to what supplementary rate information or sup-
2 porting information is required to complete the filing, the filing shall be
3 deemed to be in compliance with the filing provisions of this section.

4 (c) Reference filings. An insurer may file its rates by either filing its
5 final rates or by filing a multiplier and, if applicable, an expense constant
6 adjustment to be applied to prospective loss costs that have been filed by
7 an advisory organization on behalf of the insurer as permitted by section
8 9 and amendments thereto.

9 (d) Filings open to inspection. All rates, supplementary rate infor-
10 mation and any supporting information filed under this act shall be open
11 to public inspection once they have been filed except information marked
12 confidential, trade secret or proprietary by the insurer or filer. Copies
13 may be obtained from the commissioner upon request and upon payment
14 of a reasonable fee. The provisions of this subsection pertaining to non-
15 disclosure of information shall expire on July 1, 2010, unless the legisla-
16 ture acts to reenact such provisions. The provisions of this subsection
17 pertaining to nondisclosure of information shall be reviewed by the leg-
18 islatre prior to July 1, 2010.

19 (e) Consent to rate. Notwithstanding any other provisions of this sec-
20 tion, upon written application of the insured, stating the reason therefore,
21 a rate in excess of or below that otherwise applicable may be used on any
22 specific risk.

23 New Sec. 7. (a) (1) The commissioner shall disapprove a rate in a
24 competitive market only if the commissioner finds pursuant to subsection
25 (b) of this section that the rate is inadequate under paragraph 2 of sub-
26 section (a) of section 4, and amendments thereto, or unfairly discrimi-
27 natory under subparagraph (B) of paragraph 3 of subsection (a) of section
28 4 and amendments thereto.

29 (2) The commissioner may disapprove a rate for use in a noncom-
30 petitive market only if the commissioner finds pursuant to subsection (b)
31 of this section that the rate is excessive, inadequate or unfairly discrimi-
32 natory under subsection (a) of section 4 and amendments thereto.

33 (b) (1) Prior to the expiration of the waiting period or an extension
34 thereof of a filing made pursuant to subsection (b) of section 6, and
35 amendments thereto, the commissioner may disapprove by written order
36 rates filed pursuant to subsection (b) of section 6, and amendments
37 thereto, without a hearing. The order shall specify in what respects such
38 filing fails to meet the requirements of this act. Any insurer whose rates
39 are disapproved under this section shall be given a hearing upon written
40 request made within 30 days of disapproval.

41 (2) If, at any time, the commissioner finds that a rate applicable to
42 insurance sold in a noncompetitive market does not comply with the stan-
43 dards set forth in section 4, and amendments thereto, the commissioner

1 may, after an opportunity for a hearing held not less than 20 days written
2 notice, issue an order disapproving such rate pursuant to subsection (c)
3 of section 7 and amendments thereto. The notice of hearing shall be sent
4 to every insurer and advisory organization that adopted the rate and shall
5 specify the matters to be considered at the hearing. The disapproval order
6 shall not affect any contract or policy made or issued prior to the effective
7 date set forth in said order.

8 (3) If, at any time, the commissioner finds that a rate applicable to
9 insurance sold in a competitive market is inadequate under subparagraph
10 (A) of paragraph (3) of subsection (a) of section 4, and amendments
11 thereto, or unfairly discriminatory under subparagraph (B) of paragraph
12 (3) of subsection (a) of section 4, and amendments thereto, the commis-
13 sioner may issue an order disapproving the rate pursuant to subsection
14 (c) of section 7, and amendments thereto. Said order shall not affect any
15 contract or policy made or issued prior to the effective date set forth in
16 said order.

17 (c) If the commissioner disapproves a rate pursuant to subsection (b)
18 of this section, the commissioner shall issue an order within 30 days of
19 the close of the hearing specifying in what respects such rate fails to meet
20 the requirements of this act. The order shall state an effective date no
21 sooner than 30 business days after the date of the order when the use of
22 such rate shall be discontinued. This order shall not affect any policy made
23 before the effective date of the order.

24 (d) If an order of disapproval is appealed pursuant to section 18, and
25 amendments thereto, the insurer may implement the disapproved rate
26 upon notification to the court, in which case any excess of the disapproved
27 rate over a rate previously in effect shall be placed in a reserve established
28 by the insurer. The court shall have control over the disbursement of
29 funds from such reserve. Such funds shall be distributed as determined
30 by the court in its final order except that de minimus refunds to policy-
31 holders shall not be required.

32 New Sec. 8. (a) No policy of insurance for a special risk, as defined
33 in subsection (j) of section 1, and amendments thereto, shall be subject
34 to the requirements of this act, including but not limited to, sections 3,
35 4, 5, 6 and 7, and amendments thereto. Underwriting files, premium, loss
36 and expense statistics, financial and other records pertaining to a special
37 risk written by any insurer shall be maintained by such insurer and shall
38 be subject to examination by the insurance commissioner.

39 (b) All policies issued pursuant to the provisions of this section shall
40 contain a conspicuous disclaimer printed in at least 10 point, bold-faced
41 type that states that the policy applied for (including the rates, rating
42 plans, resulting premiums, and the policy forms) is not subject to the rate
43 and form requirements of this state and other provisions of the insurance

1 law that apply to other commercial products and may contain significant
2 differences from a policy that is subject to all provisions of the insurance
3 law. Such notice shall set forth possible differences in policy conditions,
4 forms and endorsements as compared to a policy that is subject to all of
5 the provisions of the insurance law. The format and provisions of such
6 notice shall be prescribed by the commissioner by rule and regulation.
7 The disclosure notice will also include a policyholder's acknowledgment
8 statement, to be signed and dated prior to the effective date of the cov-
9 erage, and shall remain on file with the insurer.

10 (c) In procuring insurance, a large commercial policyholder shall cer-
11 tify on a form approved by the department of insurance that it meets the
12 eligibility requirements set out in subsection (a) of section 8, and amend-
13 ments thereto, and specify the requirements that the policyholder has
14 met. This certification shall be completed annually and remain on file
15 with the insurer.

16 (d) A surplus lines broker seeking to obtain or provide insurance for
17 a large commercial policyholder is authorized to purchase insurance from
18 any eligible unauthorized insurer without making a diligent search of au-
19 thorized insurers as required by K.S.A. 40-246b and amendments thereto.

20 New Sec. 9. (a) In only those markets found to be noncompetitive
21 pursuant to section 3, insurers and advisory organizations shall file with
22 the commissioner, and the commissioner shall review, reasonable rules
23 and plans for recording and reporting of loss and expense experience.
24 The commissioner may designate one or more advisory organizations to
25 assist in gathering such experience and making compilations thereof. No
26 insurer shall be required to record or report its experience in a manner
27 inconsistent with its own rating system.

28 (b) The commissioner and every insurer and advisory organization
29 may exchange rates and rate information and experience data with insur-
30 ance regulatory officials, insurers, and advisory organizations in this and
31 other states and may consult with them with respect to the collection of
32 statistical data and the application of rating systems.

33 New Sec. 10. (a) Notwithstanding the provisions of section 11, and
34 amendments thereto, insurers participating in joint underwriting, pools
35 or residual market mechanisms may act in cooperation with each other
36 in the making of rates, rating systems, supplementary rate information,
37 policy or bond forms, underwriting rules, surveys, inspections and inves-
38 tigation; in the furnishing of loss and expense statistics or other infor-
39 mation; and in conducting research. For the purposes of this section, joint
40 underwriting, pools and residual market mechanisms shall not be deemed
41 advisory organizations.

42 (b) After notice and an opportunity for a hearing, if the commissioner
43 finds that any activity or practice of an insurer participating in a joint

1 underwriting or pooling mechanism is unfair, unreasonable, will tend to
2 substantially lessen competition in any market, or is otherwise inconsis-
3 tent with the provisions or purposes of this act and all other applicable
4 statutes, the commissioner may issue a written order specifying in what
5 respects such activity or practice is unfair, unreasonable, anti-competitive
6 or otherwise inconsistent with the provisions of this act and all other
7 applicable statutes, and require the discontinuance of such activity or
8 practice.

9 (c) Every pool shall file with the commissioner a copy of its consti-
10 tution, articles of incorporation, agreement or association bylaws, rules
11 and regulations governing activities, its members, the name and address
12 of a resident of this state upon whom notices, process and orders of the
13 commissioner may be served and any changes or modifications thereof.

14 (d) Any residual market mechanism, plan or agreement to implement
15 such a mechanism and any changes or amendments thereto, shall be
16 submitted in writing to the commissioner for approval, together with such
17 additional information as may be reasonably required by the commis-
18 sioner. The commissioner shall approve such agreements if the agree-
19 ments foster;

20 (1) The use of rates which meet the standards prescribed by this act
21 and all other applicable statutes; and

22 (2) activities and practices not inconsistent with the provisions of this
23 act and all other applicable statutes.

24 (e) The commissioner may review the operations of all residual mar-
25 ket mechanisms to determine compliance with the provisions of this act
26 and all other applicable statutes. If after a notice and opportunity for a
27 hearing, the commissioner finds that any such mechanism violates any
28 provision of this act and all other applicable statutes, the commissioner
29 may issue a written order to the parties involved specifying in what re-
30 spects such operation violates the provisions of this act and all other ap-
31 plicable statutes. The commissioner may further order the discontinuance
32 or elimination of any such operation.

33 New Sec. 11. Agreements, including the assigned risk plan estab-
34 lished by article 21 of chapter 40 of the Kansas Statutes Annotated, and
35 amendments thereto, may be made among insurers with respect to the
36 equitable apportionment among such insurers of insurance that may be
37 afforded applicants who are in good faith entitled to, but who are unable
38 to procure such insurance through ordinary methods. Subject to the ap-
39 proval of the commissioner, such insurers may agree among themselves
40 on the use of reasonable rate modifications for such insurance, such
41 agreements and rate modifications.

42 New Sec. 12. (a) The commissioner may examine any insurer, pool,
43 advisory organization or residual market mechanism to ascertain compli-

1 ance with this act.

2 (b) Every insurer, pool, advisory organization and residual market
3 mechanism shall maintain adequate records from which commissioner
4 may determine compliance with the provisions of this act. Such shall be
5 available to the commissioner for examination or inspection upon reason-
6 able notice. Such records shall contain the experience, data, statistics and
7 other information collected or used and such other information as the
8 commissioner may require.

9 (c) The reasonable cost of an examination made pursuant to this sec-
10 tion shall be paid by the examined party upon presentation of a detailed
11 account of the costs of such examination.

12 (d) The commissioner may accept the report of an examination made
13 by the insurance supervisory official of another state in lieu of an exam-
14 ination under this section.

15 New Sec. 13. After public notice and hearing, the commissioner may
16 exempt any line of insurance from any or all of the provisions of this act
17 for the purpose of relieving such line of insurance from filing or any
18 otherwise applicable provisions of this act.

19 New Sec. 14. The commissioner shall utilize, develop or cause to be
20 developed a consumer information system which will provide and dissem-
21 inate price and other relevant information on a readily available basis to
22 purchasers of homeowners, private passenger non-fleet automobile or
23 property insurance for personal, family or household needs. The com-
24 missioner may utilize, develop or cause to be developed a consumer in-
25 formation system which will provide and disseminate price and other
26 relevant information on a readily available basis to purchasers of insurance
27 for commercial risks and personal risks not otherwise specified herein.
28 Such activity may be conducted internally within the insurance depart-
29 ment, in cooperation with other state insurance departments, through
30 outside contractors or in any other appropriate manner or both. To the
31 extent deemed necessary and appropriate by the commissioner, insurers,
32 advisory organizations, statistical agents and other persons or organiza-
33 tions involved in conducting the business of insurance in this state, to
34 which this section applies, shall cooperate in the development and utili-
35 zation of a consumer information system.

36 New Sec. 15. No provision of this act shall be construed to prohibit
37 or regulate the payment of dividends, savings or unabsorbed premium
38 deposits allowed or returned by insurers to their policyholders, members
39 or subscribers. For the purposes of this section, no plan for the payment
40 of dividends, savings or unabsorbed premium deposits allowed or re-
41 turned by insurers to their policyholders, members or subscribers shall
42 be deemed a rating plan or system.

43 New Sec. 16. (a) After notice and an opportunity for a hearing, the

1 commissioner may impose a civil penalty of not more than \$500 for each
2 violation except that if the commissioner determines that such violation
3 is willful, then the commissioner may impose a penalty of not more than
4 \$2,000 for each such violation.

5 (b) Technical violations arising from systems or computer errors of
6 the same type shall be treated as a single violation. In the event of an
7 overcharge, if the insurer makes restitution including payment of interest,
8 no penalty shall be imposed.

9 (c) The commissioner may suspend or revoke the license of any in-
10 surer, advisory organization or statistical agent which fails to comply with
11 an order of the commissioner within the time prescribed by such order
12 or any extension thereof which the commissioner may grant.

13 (d) The commissioner may determine when a suspension of license
14 shall become effective and the period of such suspension. The commis-
15 sioner may modify or rescind such license suspension in any reasonable
16 manner.

17 (e) No penalty shall be imposed and no license shall be suspended
18 or revoked except upon a written order of the commissioner stating the
19 commissioner's findings, made after notice and an opportunity for a hear-
20 ing thereon.

21 New Sec. 17. Any order, ruling, finding, decision or other act of the
22 commissioner made pursuant to this act shall be subject to judicial review
23 in accordance with the Kansas act for judicial review and civil enforce-
24 ment of agency actions.

25 New Sec. 18. (a) All notices rendered pursuant to the provisions of
26 this act shall be in writing and shall state clearly the nature and purpose
27 of the hearing. All relevant facts, statutes and rules shall be specified so
28 that each respondent is fully informed of the scope of the hearing, in-
29 cluding specific allegations, if any. If a hearing is required, each notice
30 and opportunity for a hearing shall designate a hearing date at least 14
31 days from the date of the notice, unless such minimum notice period is
32 waived by respondents.

33 (b) Hearings. All hearings pursuant to the provisions of this act shall
34 be conducted in accordance with the Kansas administrative procedures
35 act to the extent such provisions are consistent with the procedural
36 requirements contained in this act.

37 New Sec. 19. If any provision of this act, or the application thereof,
38 is held invalid, such invalidity shall not affect other provisions or appli-
39 cations of the act that can be given effect without the invalid provision or
40 application.

41 New Sec. 20. The commissioner may adopt rules and regulations for
42 the administration of this act.

43 New Sec. 21. (a) Sections 1 through 21, and amendments thereto,

1 shall be known as and may be cited as the property/casualty moderniza-
2 tion act.

3 (b) This act shall be administered by the commissioner.

4 Sec. 22. K.S.A. 40-952 is hereby amended to read as follows: 40-952.

5 (a) This act applies to fire and casualty insurance, including fidelity, surety
6 and guarantee bonds, on risks or operations in this state except reinsur-
7 ance, accident and health insurance, insurance against loss of or damage
8 to, or against liability arising out of the ownership, maintenance or use of
9 any aircraft, *the assigned risk plan established by article 21 of chapter 40*
10 *of the Kansas Statutes Annotated, and amendments thereto, and the in-*
11 *insurance described in the property/casualty modernization act and amend-*
12 *ments thereto.*

13 (b) As used herein, the term “fire insurance” shall be construed to
14 apply to and include the classes of insurance described in K.S.A. 40-901.
15 The term “casualty insurance” shall be construed to apply to and include
16 the classes of insurance described in (b), (c), (d), (e), (i), (j), (k), (l) and
17 (m) of K.S.A. 40-1102 and amendments thereto, and paragraphs (b), (d),
18 (e), (f), (g) and (h) of K.S.A. 40-1203 and amendments thereto, and the
19 classes of insurance governed by Article 12a, Chapter 40, Kansas Statutes
20 Annotated *and amendments thereto.*

21 (c) For title insurance rate filing purposes, only those charges made
22 in connection with the issuance, sale and servicing of title insurance pol-
23 icies or real estate transactions by title insurance companies, agencies and
24 agents on property located in counties having a population of more than
25 10,000 shall be subject to filing requirements of this act. Charges made
26 for the assumption of risk under title insurance policies which shall be
27 construed as premium for the purposes of K.S.A. 40-252 and amend-
28 ments thereto, shall include risk premium, underwriting expenses such
29 as searching charges, examination charges, to include any such charges
30 retained by agents of the title insurer, charges for determining insurability
31 and every other charge related to the issuance of the title insurance policy.
32 Services provided by agents which are not related to insurance, such as
33 performance of real estate closings or extension of the abstract of title,
34 may be charged but not included as premium. No provision of this act
35 shall apply to the filing or regulation of title insurance rates other than
36 the requirements imposed by this section.

37 Every insurance agent, agency or company authorized to transact title
38 insurance in this state shall file with the commissioner every manual of
39 classification, rules and rates, every rating plan, every rate card and every
40 modification of the foregoing which may be used in connection with pro-
41 viding title insurance or other services in connection with real estate trans-
42 actions on property located in counties having a population of 10,000 or
43 more. No charge may be made by any title insurance agent, agency or

1 company that has not been filed with the commissioner as required by
2 this section. Any service customarily provided by a title insurance agent
3 or affiliated entity that is not included in the rates shall be disclosed when
4 the rates are filed with the commissioner.

5 (d) This act shall also apply to reciprocal or interinsurance exchanges
6 organized or operating under article 16 of chapter 40 of the Kansas Stat-
7 utes Annotated and amendments thereto, with respect to the classes of
8 insurance enumerated in this section.

9 Sec. 23. K.S.A. 40-955 is hereby amended to read as follows: 40-955.

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

24 (b) Any rate filing for the basic coverage required by K.S.A. 40-3401
25 *et seq.* and amendments thereto, loss costs filings for workers compen-
26 sation, and rates for assigned risk plans established by article 21 of chapter
27 40 of the Kansas Statutes Annotated or rules and regulations established
28 by the commissioner shall require approval by the commissioner before
29 its use by the insurer in this state. Policy forms shall require approval by
30 the commissioner before use by insurers in this state, consistent with the
31 requirements of K.S.A. 40-216 and amendments thereto. As soon as reason-
32 ably possible after such filing has been made, the commissioner shall
33 in writing approve or disapprove the same, except that any filing shall be
34 deemed approved unless disapproved within 30 days of receipt of the
35 filing.

36 (c) Any other rate filing, ~~except personal lines filings,~~ shall become
37 effective on filing or any prospective date selected by the insurer, subject
38 to the commissioner disapproving the same if the rates are determined
39 to be inadequate, excessive, unfairly discriminatory or otherwise fails to
40 meet the requirements of this act. ~~Personal lines rate filings shall be on~~
41 ~~file for a waiting period of 30 days before becoming effective, subject to~~
42 ~~the commissioner disapproving the same if the rates are determined to~~
43 ~~be inadequate, excessive, unfairly discriminatory or otherwise fail to meet~~

1 requirements of this act. The term “personal lines” shall mean insurance
2 for noncommercial automobile, homeowners, dwelling fire and renters
3 insurance policies, as defined by the commissioner by rules and regula-
4 tions. A filing complies with this act unless it is disapproved by the com-
5 missioner within the waiting period or pursuant to subsection (e).

6 (d) In reviewing any rate filing the commissioner may require the
7 insurer or rating organization to provide, at the insurer’s or rating organ-
8 ization’s expense, all information necessary to evaluate the reasonableness
9 of the filing, to include payment of the cost of an actuary selected by the
10 commissioner to review any rate filing, if the department of insurance
11 does not have a staff actuary in its employ.

12 (e) If a filing is not accompanied by the information required by this
13 act, the commissioner shall promptly inform the company or organization
14 making the filing. The filing shall be deemed to be complete when the
15 required information is received by the commissioner or the company or
16 organization certifies to the commissioner the information requested is
17 not maintained by the company or organization and cannot be obtained.
18 If the commissioner finds a filing does not meet the requirements of this
19 act, the commissioner shall send to the insurer or rating organization that
20 made the filing, written notice of disapproval of the filing, specifying in
21 what respects the filing fails to comply and stating the filing shall not
22 become effective. If at any time after a filing becomes effective, the com-
23 missioner finds a filing does not comply with this act, the commissioner
24 shall after a hearing held on not less than 10 days’ written notice to every
25 insurer and rating organization that made the filing issue an order spec-
26 ifying in what respects the filing failed to comply with the act, and stating
27 when, within a reasonable period thereafter, the filing shall be no longer
28 effective. Copies of the order shall be sent to such insurer or rating or-
29 ganization. The order shall not affect any contract or policy made or issued
30 prior to the expiration of the period set forth in the order.

31 In the event an insurer or organization has no legally effective rate
32 because of an order disapproving rates, the commissioner shall specify an
33 interim rate at the time the order is issued. The interim rate may be
34 modified by the commissioner on the commissioner’s own motion or upon
35 motion of an insurer or organization. The interim rate or any modification
36 thereof shall take effect prospectively in contracts of insurance written or
37 renewed 15 days after the commissioner’s decision setting interim rates.
38 When the rates are finally determined, the commissioner shall order any
39 overcharge in the interim rates to be distributed appropriately, except
40 refunds to policyholders the commissioner determines are de minimis
41 may not be required.

42 Any person or organization aggrieved with respect to any filing that is
43 in effect may make written application to the commissioner for a hearing

1 thereon, provided the insurer or rating organization that made the filing
2 may not proceed under this subsection. The application shall specify the
3 grounds to be relied on by the applicant. If the commissioner finds the
4 application is made in good faith, that the applicant would be so aggrieved
5 if the applicant's grounds are established, and that such grounds otherwise
6 justify holding such a hearing, the commissioner shall, within 30 days after
7 receipt of the application, hold a hearing on not less than 10 days' written
8 notice to the applicant and every insurer and rating organization that
9 made such filing.

10 Every rating organization receiving a notice of hearing or copy of an
11 order under this section, shall promptly notify all its members or sub-
12 scribers affected by the hearing or order. Notice to a rating organization
13 of a hearing or order shall be deemed notice to its members or
14 subscribers.

15 (f) No insurer shall make or issue a contract or policy except in ac-
16 cordance with filings which have been filed or approved for such insurer
17 as provided in this act.

18 (g) The commissioner may adopt rules and regulations to allow sus-
19 pension or modification of the requirement of filing and approval of rates
20 as to any kind of insurance, subdivision or combination thereof, or as to
21 classes of risks, the rates for which cannot practicably be filed before they
22 are used.

23 ~~(h) Except for workers compensation and employer's liability line, the~~
24 ~~following categories of commercial lines risks are considered special risks~~
25 ~~which are exempt from the filing requirements in this section: (1) Risks~~
26 ~~that are written on an excess or umbrella basis, (2) commercial risks, or~~
27 ~~portions thereof, that are not rated according to manuals, rating plans, or~~
28 ~~schedules including "a" rates, (3) large risks, and (4) special risks desig-~~
29 ~~ated by the commissioner, including but not limited to risks insured~~
30 ~~under highly protected risks rating plans, commercial aviation, credit in-~~
31 ~~surance, boiler and machinery, inland marine, fidelity, surety and guar-~~
32 ~~antee bond insurance risks.~~

33 ~~—(i) For the purposes of this subsection, "large risk" means: (1) An~~
34 ~~insured that has total insured property values of \$5,000,000 or more; (2)~~
35 ~~an insured that has total annual gross revenues of \$10,000,000 or more;~~
36 ~~or (3) an insured that has in the preceding calendar year a total paid~~
37 ~~premium of \$50,000 or more for property insurance, \$50,000 or more for~~
38 ~~general liability insurance, or \$100,000 or more for multiple lines policies.~~

39 ~~—(j) The exemption for any large risk contained in subsection (h) shall~~
40 ~~not apply to workers compensation and employer's liability insurance,~~
41 ~~insurance purchasing groups, and the basic coverage required by K.S.A.~~
42 ~~40-3401 et seq. and amendments thereto.~~

43 ~~—(k) Underwriting files, premium, loss and expense statistics, financial~~

1 ~~and other records pertaining to special risks written by any insurer shall~~
2 ~~be maintained by the insurer and shall be subject to examination by the~~
3 ~~commissioner.~~

4 Sec. 24. K.S.A. 40-952 and 40-955 are hereby repealed.

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