

Substitute for SENATE BILL No. 539

AN ACT concerning casualty insurance companies; relating to certain requirements regarding filing rates, forms and premiums; amending K.S.A. 40-955 and K.S.A. 2005 Supp. 40-216 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 40-216 is hereby amended to read as follows: 40-216. (a) (1) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. ~~No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within 30 days of such filing, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state, but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.~~

(2) (A) *Except as provided in subparagraph (B), each contract of insurance or indemnity issued or delivered in this state shall be effective on filing, or any subsequent date selected by the insurer, unless the commissioner disapproves such contract of insurance within 30 days after filing because the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet the requirements of this act.*

(B) *The following contracts of insurance or indemnity shall not be subject to the provisions of subsection (A):*

(i) *Contracts pertaining to large risks as defined in K.S.A. 40-955(i), and amendments thereto, which are exempt from the filing requirements of this section;*

(ii) *personal lines contracts filed in accordance with paragraph (3) of this section;*

(iii) *any form filing for the basic coverage required by K.S.A. 40-3401 et seq., and amendments thereto; and*

(iv) *form filing for workers compensation.*

No form filing listed in clauses (iii) and (iv) of this subparagraph shall be used in this state by any insurer until such form filing has been approved by the commissioner.

(3) *Each personal lines contract of insurance or indemnity issued or delivered in this state shall be on file for a period of 30 days before becoming effective unless the commissioner disapproves such personal lines contract if the rates are determined by the commissioner to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet the requirements of this act. For the purposes of this paragraph, the term "personal lines" shall mean insurance for noncommercial automobile, homeowners, dwelling, fire and renters insurance policies as defined by the commissioner by rules and regulations.*

(4) *Under such rules and regulations as the commissioner of insurance shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.*

(5) *The failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.*

(b) *The commissioner of insurance shall allow any insurance company authorized to transact business in this state to deliver to any person in*

this state any contract of insurance or indemnity, including any explanatory materials, written in any language other than the English language under the following conditions:

(1) The insured or applicant for insurance who is given a copy of the same contract of insurance or indemnity or explanatory materials written in the English language;

(2) the English language version of the contract for insurance or indemnity or explanatory materials delivered shall be the controlling version; and

(3) any contract of insurance or indemnity or explanatory materials written in any language other than English shall contain a disclosure statement in 10 point boldface type, printed in both the English language and the other language used, stating the English version of the contract of insurance or indemnity is the official or controlling version and that the version is written in any language other than English is furnished for informational purposes only.

(c) All contracts of insurance or indemnity that are required to be filed with the commissioner of insurance shall be accompanied by any version of such contract of insurance or indemnity written in any language other than the English language.

(d) Any insurance company or insurer, including any agent or employee thereof, who knowingly misrepresents the content of a contract of insurance or indemnity or explanatory materials written in a language other than the English language shall be deemed to have violated the unfair trade practice law.

(e) For the purposes of this section, the term “contract of insurance or indemnity” shall include any rider, endorsement or application pertaining to such contract of insurance or indemnity.

(f) (1) *If at any time after a filing becomes effective, the commissioner finds that such filing does not comply with this act, after the commissioner shall send written notice to every insurer and rating organization making such filing that a hearing concerning such filing will be held in not less than 10 days.*

(2) *After the hearing, the commissioner shall issue an order stating:*

(A) *The reasons why such filing failed to comply with the act; and*

(B) *the date, within a reasonable time after the date the order is issued, upon which such filing shall no longer be effective.*

(3) *A copy of the commissioner’s order shall be sent to every insurer and rating organization that made such filing.*

(4) *No order issued pursuant to this subsection shall affect any contract or policy made or issued under such filing prior to the date specified upon which such filing shall no longer be effective.*

Sec. 2. K.S.A. 40-955 is hereby amended to read as follows: 40-955.

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

(b) Any rate filing for the basic coverage required by K.S.A. 40-3401 *et seq.* and amendments thereto, loss costs filings for workers compensation, and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas Statutes Annotated or rules and regulations established by the commissioner shall require approval by the commissioner before its use by the insurer in this state. ~~Policy forms shall require approval by the commissioner before use by insurers in this state, consistent with the requirements of K.S.A. 40-216 and amendments thereto.~~ As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be

deemed approved unless disapproved within 30 days of receipt of the filing.

(c) Any other rate filing, except personal lines filings, shall become effective on filing or any prospective date selected by the insurer, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. Personal lines rate filings shall be on file for a waiting period of 30 days before becoming effective, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet requirements of this act. The term “personal lines” shall mean insurance for noncommercial automobile, homeowners, dwelling fire-and-renters insurance policies, as defined by the commissioner by rules and regulations. A filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection (e).

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

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

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

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

(2) (A) In the event an insurer or organization has no legally effective rate because of an order disapproving rates, the commissioner shall specify an interim rate at the time the order is issued.

(B) The interim rate may be modified by the commissioner on the commissioner’s own motion or upon motion of an insurer or organization. The interim rate or any modification thereof shall take effect prospectively in contracts of insurance written or renewed 15 days after the commissioner’s decision setting interim rates.

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

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

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

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

of a hearing or order shall be deemed notice to its members or subscribers.

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

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

(h) Except for workers compensation and employer's liability line, the following categories of commercial lines risks are considered special risks which are exempt from the filing requirements in this section:

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

(i) For the purposes of this subsection, "large risk" means:

- (1) An insured that has total insured property values of \$5,000,000 or more;
- (2) an insured that has total annual gross revenues of \$10,000,000 or more; or
- (3) an insured that has in the preceding calendar year a total paid premium of \$50,000 or more for property insurance, \$50,000 or more for general liability insurance, or \$100,000 or more for multiple lines policies.

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

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

New Sec. 3. (a) Insurers may increase or decrease premiums on a given risk basis without documentation up to 40% based on any factor, except the rate adjustment made pursuant to this section cannot:

- (1) Be based upon the race, creed, national origin or religion of the insured.
- (2) Apply to insurance covering:
 - (A) Risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes and other property and casualty insurance for personal, family or household needs;
 - (B) farms and ranches, including crop insurance;
 - (C) workers compensation; or
 - (D) coverage required by K.S.A. 40-3401 et seq., and amendments thereto.

(b) By rules and regulations adopted in accordance with the rules and regulations filing act, the commissioner of insurance may broaden the range of plus or minus 40% for any line or type of insurance subject to K.S.A. 40-955, and amendments thereto, if the commissioner of insurance finds that the:

- (1) Utilization of this section by the insurance industry has produced a significant number of rate modifications at or near the upper limit and at the lower limit of the allowable range of modification; and
- (2) modifiers at and near the upper and lower limits of the allowable range of modification appear to be predominantly correlated with individual risk factors that relate to expected losses and expenses.

(c) By rules and regulations adopted in accordance with the rules and regulations filing act, the commissioner of insurance may reduce the range of plus or minus 40% for any line or type of insurance subject to K.S.A. 40-955, and amendments thereto, if the commissioner of insurance finds that modifiers at or near the upper or lower limits of the allowable range of modification are not predominantly correlated with individual

risk factors that relate to expected losses and expenses, but such reduction shall not reduce the range to less than plus or minus 25%.

(d) Any insurer aggrieved by the commissioner's findings pursuant to this section may appeal the same pursuant to the Kansas administrative procedure act.

Sec. 4. K.S.A. 40-955 and K.S.A. 2005 Supp. 40-216 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.