

Approved: March 2, 2011

Date

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:45 p.m. on February 21, 2011, in Room 152-S of the Capitol.

All members were present except:

Anthony Brown - Excused

Committee staff present:

David Wiese, Office of the Revisor of Statutes

Ken Wilke, Office of the Revisor of Statutes

Melissa Calderwood, Legislative Research Department

Cindy Lash, Kansas Legislative Research Department

Sue Fowler, Committee Assistant

Conferees appearing before the Committee:

Bob Tomlinson – Kansas Insurance Department

Others attending:

See attached list.

Discussion and action on:

HB 2075 **Insurance department Anti-fraud program; extension of exception to open records act disclosure**

Representative Grant moved to pass HB 2075 out favorably. Seconded by Representative Hermanson. Motion passed.

HB 2076 **Increasing the amount of time in which filings made to the commissioner of municipal pools must be reviewed**

David Wiese, Office of Revisor of Statutes, gave a brief outline of **HB 2076**.
line of **HB 2076**.

Representative Fawcett moved to pass HB 2076 out favorably. Seconded by Representative Montgomery. Motion passed.

HB 2077 **Increasing the amount of time worker's compensation pools have to file their end of year financial statements**

Representative Hermanson moved to pass HB 2077 out favorably. Seconded by Representative Grant. Motion passed.

HB 2139 **Workers compensation insurance rates**

Ken Wilke, Office of Revisor of Statutes, gave a brief outline of **HB 2139**.

Representative Hermanson moved to pass HB 2139 out favorably. Seconded by Representative Grant. Representative Proehl made a substitute motion to amend (Attachment 1) HB 2139. Seconded by Representative Montgomery. Representative Grant moved to pass HB 2139 out favorably as amended. Seconded by Representative Fawcett. Motion passed.

Representative Grant moved without objection to pass the February 16, 2011 committee minutes as written.

Next meeting is scheduled for Wednesday, March 2, 3:30 P.M. in Room 152-S in Capitol.

Meeting adjourned at 4:50 p.m.

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Hein Law Firm

HOUSE BILL No. 2139

By Committee on Insurance

2-3

1 AN ACT concerning insurance; relating to rates and rate modifications
2 for workers compensation insurance; amending K.S.A. 40-2109 and
3 repealing the existing section. sections

and K.S.A. 2010
Supp. 40-955

4
5 *Be it enacted by the Legislature of the State of Kansas:*

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

Section 1. K.S.A. 2010 Supp. 40-955 is hereby
amended to read as follows: (insert 40-955, as
amended)

Sec. 2.

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

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

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

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

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

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

1 The commissioner shall review the plan as soon as reasonably
2 possible after filing in order to determine whether it meets the
3 requirements set forth in subsections (a) and (c) above. As soon as
4 reasonably possible after the plan has been filed the commissioner shall
5 in writing approve or disapprove the same, except that any plan shall be
6 deemed approved unless disapproved within 45 days. Subsequent to the
7 waiting period the commissioner may disapprove any plan on the ground
8 that it does not meet the requirements set forth in subsections (a), (b) and
9 (c) above, but only after a hearing held upon not less than 10 days' written
10 notice to every insurer and rating organization affected specifying the
11 matter to be considered at such hearing, and only by an order specifying
12 in what respect the commissioner finds that such plan fails to meet such
13 requirements and stating when within a reasonable period thereafter such
14 plan shall be deemed no longer effective. Such order shall not affect any
15 assignment made or policy issued or made prior to the expiration of the
16 period set forth in such order. Amendments to such plan or plans shall be
17 prepared, and filed and reviewed in the same manner as herein provided
18 with respect to the original plan or plans.

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

37 (e) The commissioner shall approve rates and rate modifications for
38 each plan that provides workers compensation insurance pursuant to this
39 section which, over a period of time, but no later than January 1, 1997,
40 will reduce the assessments levied by the plan to less than 10%. If the
41 commissioner finds that the percentage of the total Kansas workers
42 compensation premium volume written by the plan has not decreased
43 below 20% of the total amount of such premium volume by December

1 ~~31, 1998, the provisions of this subsection shall no longer apply and the~~
2 ~~commissioner may cause the governing board of the plan to file new rates~~
3 ~~and rate modifications pursuant to this section. Notwithstanding the~~
4 ~~foregoing provisions of this subsection, the commissioner shall not~~
5 ~~approve rates or rating plans which produce rates or premiums for risks~~
6 ~~with less than \$2,250 annual premium that are higher than those which~~
7 ~~would be applied to such risks in the voluntary market, except that this.~~
8 *This provision shall not prohibit the application of surcharges, experience*
9 *modifications or other rating variables based on the claims experience of*
10 *individual risks.*

11 Sec. 2 ³ K.S.A. 40-2109 is hereby repealed.

12 Sec. 3 ⁴ This act shall take effect and be in force from and after its
13 publication in the statute book.

and K.S.A. 2010
Supp. 40-955 are

40-955. Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing. (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) Certificate of insurance forms must be filed with the commissioner of insurance and approved prior to use. Notwithstanding the "large risk" filing exemption in subsection (j), a certificate of insurance cannot be used to modify, alter or amend the insurance policy it describes. The certificate of insurance shall contain the following or similar language: The certificate of insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policies listed thereon. An industry standard setting organization may be authorized by the commissioner of insurance to file certificate of insurance forms on behalf of authorized insurers.

(c) 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. 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.

(d) 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 (f).

(e) 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.

(f) (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.

Subject to the provisions of K.S.A. 40-954, and amendments thereto, an insurer may file up to four workers compensation loss cost multipliers and up to four policy holder dividend plans within a single insurer. Eligibility for individual loss cost multipliers and dividend plans shall be based on insurer underwriting criteria and judgment.

(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. The interim rate may be modified by the commissioner on the commissioner's own motion or upon motion of an insurer or organization.

(B) 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, 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.

(g) 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.

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

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

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

History: L. 1997, ch. 154, § 5; L. 1999, ch. 63, § 2; L. 2006, ch. 124, § 1; L. 2007, ch. 150, § 2; July 1.