

SENATE BILL No. 119

By Committee on Financial Institutions and Insurance

1-31

1 AN ACT concerning insurance; relating to insurance law; updating certain
2 obsolete statutory references contained therein; amending K.S.A. 40-
3 201, 40-216, 40-241 and 40-955 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 40-201 is hereby amended to read as follows: 40-
7 201. For the purposes of this article the term "insurance company" shall,
8 unless otherwise provided, apply to all corporations, companies,
9 associations, societies, persons or partnerships writing contracts of
10 insurance, indemnity or suretyship upon any type of risk or loss: ~~Provided,~~
11 ~~however, That this definition shall not be held to. "Insurance company"~~
12 *does not* include fraternal benefit societies as defined in ~~section 40-701 of~~
13 ~~this code~~ K.S.A. 40-738, and amendments thereto, or hospitals or hospital
14 associations ~~which~~ *that* have been in operation ~~ten years or more for not~~
15 *less than 10 years.*

16 Sec. 2. K.S.A. 40-216 is hereby amended to read as follows: 40-216.
17 (a) (1) No insurance company shall hereafter transact business in this state
18 until certified copies of its charter and amendments thereto shall have been
19 filed with and approved by the commissioner of insurance. A copy of the
20 bylaws and amendments thereto of insurance companies organized under
21 the laws of this state shall also be filed with and approved by the
22 commissioner of insurance. The commissioner may also require the filing
23 of such other documents and papers as are necessary to determine
24 compliance with the laws of this state.

25 (2) (A) Except as provided in subparagraph (B), each contract of
26 insurance or indemnity issued or delivered in this state shall be effective
27 on filing, or any subsequent date selected by the insurer, unless the
28 commissioner disapproves such contract of insurance or indemnity within
29 30 days after filing because the contract of insurance or indemnity does
30 not comply with Kansas law.

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

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

36 (ii) personal lines contracts filed in accordance with paragraph (3) ~~of~~

1 ~~this section;~~

2 (iii) any form filing for the basic coverage required by K.S.A. 40-
3 3401 et seq., and amendments thereto; and

4 (iv) form filing for workers compensation.

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

8 (3) Each personal lines contract of insurance or indemnity issued or
9 delivered in this state shall be on file for a period of 30 days before
10 becoming effective unless the commissioner disapproves such personal
11 lines contract of insurance or indemnity within 30 days after filing because
12 the contract of insurance or indemnity does not comply with Kansas law.
13 For the purposes of this paragraph, the term "personal lines" ~~shall mean~~
14 *means* insurance for noncommercial automobile, homeowners, dwelling,
15 fire and renters insurance policies as defined by the commissioner by rules
16 and regulations.

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

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

31 (b) The commissioner of insurance shall allow any insurance
32 company authorized to transact business in this state to deliver to any
33 person in this state any contract of insurance or indemnity, including any
34 explanatory materials, written in any language other than the English
35 language under the following conditions:

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

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

42 (3) any contract of insurance or indemnity or explanatory materials
43 written in any language other than English shall contain a disclosure

1 statement printed in both the English language and the other language
2 used, stating the English version of the contract of insurance or indemnity
3 is the official or controlling version and that the version is written in any
4 language other than English is furnished for informational purposes only.

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

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

14 (e) For the purposes of this section, the term "contract of insurance or
15 indemnity" ~~shall include~~ *includes* any rider, endorsement or application
16 pertaining to such contract of insurance or indemnity.

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

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

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

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

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

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

31 Sec. 3. K.S.A. 40-241 is hereby amended to read as follows: 40-241.
32 Any applicant or prospective applicant for an agent's license, if an
33 individual, shall be given an examination by the commissioner or the
34 commissioner's designee to determine whether such applicant possesses
35 the competence and knowledge of the kinds of insurance and transactions
36 under the license applied for, or to be applied for, of the duties and
37 responsibilities of such a license and of the pertinent provisions of the laws
38 of this state. The applicant shall be tested on each class or subclassification
39 of insurance that may be written. An examination fee prescribed in rules
40 and regulations adopted by the commissioner shall be paid by the applicant
41 and shall be required for each class of insurance for each attempt to pass
42 the examination. Such examination fee shall be in addition to the
43 certification fee required under K.S.A. 40-252, and amendments thereto.

1 There shall be four classes of insurance for the purposes of this act:

- 2 (1) Life;
- 3 (2) accident and health;
- 4 (3) casualty and allied lines; and
- 5 (4) property and allied lines.

6 An insurance license may be issued as a subclassification of casualty
7 and allied lines to any auto rental agency. An auto rental agency may offer
8 or sell insurance only in connection with and incidental to the rental of
9 motor vehicles, whether at the rental office, at the point of delivery of a
10 vehicle, or by preselection of coverage in a master, corporate or group
11 rental agreement, in any of the following general categories:

- 12 (1) Personal accident insurance covering risks of travel;
- 13 (2) motor vehicle liability insurance;
- 14 (3) personal effects insurance providing coverage to renters and other
15 occupants of the motor vehicle;
- 16 (4) roadside assistance and emergency sickness protection programs;
- 17 and

18 (5) any other travel or auto-related coverage an auto rental company
19 may offer in connection with and incidental to rental of motor vehicles. No
20 insurance may be issued by an auto rental agency unless the rental period
21 of the rental agreement does not exceed 90 consecutive days and brochures
22 and other written material clearly and correctly explaining insurance
23 coverages offered by the agency are available for prospective renters and
24 clear and complete disclosures are provided to prospective renters that
25 such coverage may be duplicative of other insurance owned by the renter,
26 that purchase of insurance coverage is not a condition for renting a motor
27 vehicle and describing the process for filing a claim.

28 Auto rental agencies employing representatives shall conduct a training
29 program for each representative, providing instruction on the kinds of
30 insurance coverage offered by the agency.

31 No auto rental agency shall offer or solicit any insurance other than the
32 coverages described in this section without an insurance license. No auto
33 rental employee or auto rental agency shall advertise or otherwise hold
34 themselves out as licensed insurers, insurance agents or insurance brokers.

35 The commissioner of insurance shall adopt rules and regulations with
36 respect to the scope, subclassification, type and conduct of such
37 examination. Examinations shall be given to applicants at least twice a
38 month in Topeka, Kansas, and at least quarterly in other convenient
39 locations in the state of Kansas. The commissioner shall publish or arrange
40 for the publication of information and material which applicants can use to
41 prepare for such examination. One or more rating organizations, advisory
42 organizations or other associations may be designated by the
43 commissioner to assist in, or assume responsibility for, distribution of the

1 study manuals to applicants and other interested parties. Persons
2 purchasing the study manual shall be charged a reasonable fee established
3 or approved by the commissioner. In the event the publication and
4 distribution of the study material or the development and conduct of
5 examinations is delegated to private firms, organizations or associations
6 and the state incurs no expense or obligation, the provisions of K.S.A. 75-
7 3738 through 75-3744, and amendments thereto, shall not apply. If the
8 commissioner of insurance finds that the individual applicant is
9 trustworthy, competent and has satisfactorily completed the examination,
10 the commissioner shall forthwith issue to the applicant a license as an
11 insurance agent but the issuance of such license shall confer no authority
12 to transact business in this state until the agent has been certified by a
13 company pursuant to K.S.A. ~~40-241~~ 40-4912, and amendments thereto. If
14 such applicant fails to satisfactorily complete the examination, the
15 examination may be retaken following a waiting period of not less than
16 seven days from the date of the last attempt. If the applicant again fails to
17 satisfactorily complete the examination, it may be retaken following
18 another waiting period of not less than seven days from the date of the
19 most recent attempt.

20 Sec. 4. K.S.A. 40-955 is hereby amended to read as follows: 40-955.

21 (a) Every insurer shall file with the commissioner, except as to inland
22 marine risks where general custom of the industry is not to use manual
23 rates or rating plans, every manual of classifications, rules and rates, every
24 rating plan, policy form and every modification of any of the foregoing
25 which it proposes to use. Every such filing shall indicate the proposed
26 effective date and the character and extent of the coverage contemplated
27 and shall be accompanied by the information upon which the insurer
28 supports the filings. A filing and any supporting information shall be open
29 to public inspection after it is filed with the commissioner, except that
30 disclosure shall not be required for any information contained in a filing or
31 in any supporting documentation for the filing when such information is
32 either a trade secret or copyrighted. For the purposes of this section, the
33 term "trade secret" ~~shall have the meaning ascribed to it~~ *means the same*
34 *as defined* in K.S.A. 60-3320, and amendments thereto. An insurer may
35 satisfy its obligations to make such filings by authorizing the
36 commissioner to accept on its behalf the filings made by a licensed rating
37 organization or another insurer. Nothing contained in this act shall be
38 construed to require any insurer to become a member or subscriber of any
39 rating organization.

40 (b) Certificate of insurance forms must be filed with the
41 commissioner of insurance and approved prior to use. Notwithstanding the
42 "large risk" filing exemption in subsection-~~(j)~~ (i), a certificate of insurance
43 cannot be used to modify, alter or amend the insurance policy it describes.

1 The certificate of insurance shall contain the following or similar
2 language: The certificate of insurance neither affirmatively nor negatively
3 amends, extends or alters the coverage afforded by the policies listed
4 thereon. An industry standard setting organization may be authorized by
5 the commissioner of insurance to file certificate of insurance forms on
6 behalf of authorized insurers.

7 (c) Any rate filing for the basic coverage required by K.S.A. 40-3401
8 et seq., and amendments thereto, loss costs filings for workers
9 compensation, and rates for assigned risk plans established by article 21 of
10 chapter 40 of the Kansas Statutes Annotated or rules and regulations
11 established by the commissioner shall require approval by the
12 commissioner before its use by the insurer in this state. As soon as
13 reasonably possible after such filing has been made, the commissioner
14 shall in writing approve or disapprove the same, except that any filing
15 shall be deemed approved unless disapproved within 30 days of receipt of
16 the filing.

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

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

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

43 (B) If the commissioner finds a filing does not meet the requirements

1 of this act, the commissioner shall send to the insurer or rating
2 organization that made the filing, written notice of disapproval of the
3 filing, specifying in what respects the filing fails to comply and stating the
4 filing shall not become effective.

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

14 (2) (A) In the event an insurer or organization has no legally effective
15 rate because of an order disapproving rates, the commissioner shall specify
16 an interim rate at the time the order is issued. The interim rate may be
17 modified by the commissioner on the commissioner's own motion or upon
18 motion of an insurer or organization.

19 (B) The interim rate or any modification thereof shall take effect
20 prospectively in contracts of insurance written or renewed 15 days after
21 the commissioner's decision setting interim rates.

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

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

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

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

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

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

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

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

13 (i) Except for workers compensation and employer's liability line, the
14 following categories of commercial lines risks are considered special risks
15 which are exempt from the filing requirements in this section: (1) Risks
16 that are written on an excess or umbrella basis; (2) commercial risks, or
17 portions thereof, that are not rated according to manuals, rating plans, or
18 schedules including "a" rates; (3) large risks; and (4) special risks
19 designated by the commissioner, including but not limited to risks insured
20 under highly protected risks rating plans, commercial aviation, credit
21 insurance, boiler and machinery, inland marine, fidelity, surety and
22 guarantee bond insurance risks.

23 (j) For the purposes of this subsection, "large risk" means: (1) An
24 insured that has total insured property values of \$5,000,000 or more; (2) an
25 insured that has total annual gross revenues of \$10,000,000 or more; or (3)
26 an insured that has in the preceding calendar year a total paid premium of
27 \$50,000 or more for property insurance, \$50,000 or more for general
28 liability insurance, or \$100,000 or more for multiple lines policies.

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

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

37 (m) (1) Any entity that purchases a workers compensation policy for
38 the covered employees of more than one employer pursuant to a shared
39 employment relationship with each employer must purchase the workers
40 compensation policy on a separate multiple coordinate policy basis. Such
41 workers compensation policies must be issued pursuant to K.S.A. 44-501
42 et seq., and amendments thereto, from an insurer holding a certificate of
43 authority to do business in this state and providing workers compensation

1 coverage.

2 (2) The commissioner of insurance may allow an insurer to issue
3 coverage through a master policy if the commissioner is satisfied that the
4 insurer is able to track and report individual client experience to the
5 advisory organization in an acceptable fashion. All such master policies
6 must be filed with the commissioner for prior approval.

7 (3) The commissioner of insurance shall be authorized to adopt such
8 rules and regulations as are reasonable and necessary to carry out the
9 purpose and the provisions of this subsection.

10 Sec. 5. K.S.A. 40-201, 40-216, 40-241 and 40-955 are hereby
11 repealed.

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