

**SENATE BILL No. 127**

By Committee on Ways and Means

1-19

10 AN ACT concerning insurance; pertaining to subsidence insurance.

11

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

13 Section 1. As used in this act: (a) “Basic property insurance” means  
14 insurance against direct loss to property as defined and limited in dwelling  
15 fire, homeowners, **business buildings** and farm policies and extended  
16 coverage endorsements thereon, as approved by the commissioner of in-  
17 surance, and insurance for such types, classes, and locations of property  
18 against the perils of vandalism, malicious mischief, burglary, or theft, as  
19 the commissioner shall designate.

20 **(b) “Business building insurance” means a policy providing**  
21 **property coverage on business buildings and structures for the per-**  
22 **ils of fire and lightning and additional coverages.**

23 ~~(b)~~ (c) “Dwelling fire insurance” means a policy providing property  
24 coverage on residential buildings for the perils of fire and lightning and  
25 additional coverages.

26 ~~(c)~~ (d) “Farm insurance” means insurance providing property cov-  
27 erage on farm dwelling buildings.

28 ~~(d)~~ (e) “Homeowners insurance” means insurance on owner-occu-  
29 pied dwellings providing personal multi-peril property and liability cov-  
30 erages commonly known as homeowners insurance.

31 ~~(e)~~ (f) “Mine subsidence” means loss caused by the collapse or lateral  
32 or vertical movement of structures resulting from the caving in of under-  
33 ground mines, including coal mines, lead mines, zinc mines, clay mines,  
34 limestone mines, **gypsum mines** and salt mines. “Mine subsidence” does  
35 not include loss caused by earthquake, landslide, volcanic eruption, or  
36 collapse of strip mines, storm and sewer drains, or rapid transit tunnels.

37 ~~(f)~~ (g) “Mine subsidence coverage” means the limits and type of cov-  
38 erage as defined by the mine subsidence insurance governing board in  
39 the coverage form and approved by the commissioner.

40 ~~(g)~~ (h) “Structure” means any one- to four-family dwellings as de-  
41 fined and limited in dwelling fire, homeowners, **business building** and  
42 farm policies and other structures as described, defined, or limited in the  
43 mine subsidence insurance form.

1     Sec. 2. (a) The Kansas mine subsidence insurance underwriting as-  
2     sociation is hereby created, consisting of all insurers authorized to write  
3     and engaged in writing within the state, on a direct basis, basic property  
4     insurance or any component thereof in multi-peril policies, to operate in  
5     accordance with the plan of operation adopted pursuant to section 4 and  
6     amendments thereto. Every such insurer shall be a member of the as-  
7     sociation and shall remain a member as a condition of its authority to  
8     write such insurance in this state.

9     (b) The association, pursuant to sections 1 to 10, and amendments  
10    thereto, and any plan of operation thereunder with respect to mine sub-  
11    sidence insurance, may assume and cede reinsurance on insurable risks  
12    written by its members.

13    (c) For the purpose of governing the mine subsidence insurance under-  
14    writing association, there is hereby created a mine subsidence insur-  
15    ance governing board consisting of the ~~secretary of health and environ-~~  
16    ~~ment or the secretary's~~ **the commissioner of insurance or the**  
17    ~~commissioner's~~ designee, as chairperson, the state treasurer or the state  
18    treasurer's designee, the ~~commissioner of insurance or the commis-~~  
19    ~~sioner's~~ **secretary of health and environment or the secretary's** de-  
20    signee, and one representative from member insurance companies. The  
21    representative from member insurance companies shall be a Kansas dom-  
22    iciled member, elected every three years by members of the association.  
23    All actions of the mine subsidence insurance underwriting association  
24    shall be approved by the mine subsidence insurance governing board.  
25    The mine subsidence insurance governing board may employ, compen-  
26    sate, and prescribe the duties and powers of such employees and con-  
27    sultants as are necessary to carry out sections 1 to 10, and amendments  
28    thereto, and is authorized to enter into a ~~contract with the Kansas insur-~~  
29    ~~ance guaranty association~~ **contracts** for administrative and claims adjust-  
30    ing services.

31    (1) The Kansas mine subsidence underwriting association shall organ-  
32    ize annually by the election from its membership of a chairperson and  
33    shall adopt such rules of procedure as the mine subsidence insurance  
34    governing board deems necessary for conducting its business.

35    (2) The Kansas mine subsidence underwriting association shall hold  
36    such meetings as in its judgment may be necessary for the performance  
37    of its powers, duties and functions. Members of the mine subsidence  
38    insurance governing board shall receive compensation, subsistence allow-  
39    ances, mileage and other expenses for attending meetings of the board  
40    as provided by K.S.A. 75-3223, and amendments thereto.

41    (3) The state insurance department shall provide such technical, legal  
42    and clerical staff assistance as may be requested by the mine subsidence  
43    insurance governing board in the administration of the provisions of this

1 act.

2 (4) The Kansas mine subsidence underwriting association shall be sub-  
3 ject to the provisions of the Kansas open meetings act.

4 (5) The Kansas mine subsidence underwriting association shall be  
5 subject to the provisions of the Kansas open records act.

6 (d) The Kansas mine subsidence insurance underwriting association  
7 shall be attached to the insurance department and shall be within the  
8 insurance department as a part thereof. All budgeting, purchasing and  
9 related management functions of the Kansas mine subsidence insurance  
10 underwriting association shall be administered under the direction and  
11 supervision of such association and the commissioner of insurance. All  
12 vouchers for expenditures from appropriations made for the use of such  
13 board shall be approved by the chairperson of such board or by a person  
14 or persons designated by the chairperson for such purpose and by the  
15 commissioner of insurance. The budget of such board shall be financed  
16 in the same manner and as a part of the budget of the state insurance  
17 department. The commissioner of insurance shall have no authority over  
18 the Kansas mine subsidence insurance underwriting association, or any  
19 employee thereof, with respect to the performance of any power, duty or  
20 function of the office or the exercise of any other authority of the Kansas  
21 mine subsidence insurance underwriting association.

22 Sec. 3. There is hereby created the mine subsidence insurance fund,  
23 which shall be administered by the mine subsidence insurance governing  
24 board for the purpose of making available insurance coverage against  
25 mine subsidence as to any structure within this state. All of the following  
26 apply to the fund:

27 (a) The moneys in the fund shall be derived from premiums for re-  
28 insurance assumed by the mine subsidence insurance underwriting as-  
29 sociation on policies written by members of the association.

30 (b) Premiums on mine subsidence coverage in policies written by  
31 members of the association shall be established by the plan of operation  
32 at a rate or within a schedule of rates sufficient to satisfy all foreseeable  
33 claims upon the fund during the period of coverage, giving due consid-  
34 eration to relevant loss or claim experience or trends, to cover normal  
35 costs of operation of the fund, and to provide a reasonable reserve for  
36 unexpected contingencies. No deviation shall be allowed from the pre-  
37 mium established by the plan, but the mine subsidence insurance gov-  
38 erning board shall periodically review the premium level and the expe-  
39 rience data applicable to operation of the fund and, with the approval of  
40 the commissioner of insurance, make changes as required.

41 (c) Sections 1 to 10, and amendments thereto, shall not create any  
42 liability on the part of the state of Kansas beyond the amounts paid into  
43 the fund and earned by the fund, nor is any liability created on the part

1 of the mine subsidence insurance underwriting association or its members  
2 or the ~~Kansas insurance guaranty association or its members~~ **contractors**  
3 **or vendors employed by the mine subsidence governing board.**

4 (d) The state treasurer shall be the custodian of the fund, which shall  
5 not be a part of the state treasury. All disbursements from the fund shall  
6 be paid by the state treasurer upon requisitions signed by the chairperson  
7 of the mine subsidence insurance governing board or the chairperson's  
8 designee. The chairperson of the mine subsidence insurance governing  
9 board may designate an authorized representative of the ~~Kansas insurance~~  
10 ~~guaranty association~~ **vendor hired** to sign requisitions on the fund if the  
11 mine subsidence insurance underwriting association has entered into a  
12 contract ~~with the Kansas insurance guaranty association~~ for administrative  
13 and claims adjusting services. Before signing any requisition, such au-  
14 thorized representative of the ~~Kansas insurance guaranty association~~ **ven-**  
15 **dor**, shall file with the secretary of state a good and sufficient bond pay-  
16 able to the state to insure the faithful performance of such authorized  
17 representative's duty, in such sum as the mine subsidence insurance gov-  
18 erning board requires.

19 Sec. 4. (a) The mine subsidence insurance governing board shall sub-  
20 mit to the commissioner of insurance, for the commissioner's approval, a  
21 proposed plan of operation for the economical, fair, and nondiscrimina-  
22 tory administration of the mine subsidence insurance fund under sections  
23 1 to 10 and amendments thereto. If the commissioner of insurance dis-  
24 approves the proposed plan of operation, the mine subsidence insurance  
25 governing board shall, within 15 days, submit for approval an appropri-  
26 ately revised plan of operation and if the mine subsidence insurance gov-  
27 erning board fails to do so, or if the revised plan submitted is unaccept-  
28 able, the commissioner shall promulgate a plan of operation; provided,  
29 that the commissioner shall not approve or promulgate a plan of operation  
30 until adequate financial resources have been secured for start-up costs  
31 and initial reserves for the insurance program established pursuant to  
32 sections 1 to 10 and amendments thereto.

33 (b) If amendment of the plan of operation is requested by the com-  
34 missioner or the mine subsidence insurance governing board, such gov-  
35 erning board shall submit amendments to the commissioner for approval.  
36 If such amendments are not approved by the commissioner, the govern-  
37 ing board shall, within 15 days, submit for approval an appropriately re-  
38 vised amendment. If the governing board fails to do so, or if the amend-  
39 ment is not approved by the commissioner, the commissioner shall  
40 promulgate such amendment as the commissioner finds necessary.

41 (c) The commissioner of insurance shall adopt the plan of operation  
42 and all amendments thereto in accordance with the Kansas open meetings  
43 act.

1     Sec. 5. (a) At least once each year, the commissioner of insurance  
2 shall audit the affairs of the mine subsidence insurance fund in order to  
3 ascertain its financial condition and ability to fulfill its obligations, whether  
4 the mine subsidence insurance underwriting association in managing the  
5 fund has complied with the law relating to the fund, and the equity of  
6 such association's plans and dealings with its subscribers.

7     (b) The commissioner of insurance shall ascertain the expenses in-  
8 curred in making any such audit and shall certify the amount to the mine  
9 subsidence insurance governing board for payment from the fund.

10    Sec. 6. (a) Every insurer that offers basic property and homeowners  
11 insurance insuring on a direct basis a structure located in this state shall  
12 offer mine subsidence coverage provided by the Kansas mine subsidence  
13 insurance underwriting association in each policy of basic property and  
14 homeowners insurance that is delivered, issued for delivery, or renewed  
15 in this state.

16    (b) The premium charged for mine subsidence coverage shall be the  
17 same as the premium level set by the plan of operation formulated pur-  
18 suant to section 4 and amendments thereto. Any deductible shall be ex-  
19 pressed in the mine subsidence coverage form as approved by the mine  
20 subsidence insurance governing board and approved by the commissioner  
21 of insurance, but at no time shall the deductible be less than \$250 or  
22 more than \$500, and the total insured value reinsured by the association  
23 shall not exceed \$300,000. This section does not preclude any insurance  
24 company from selling insurance coverage under this section in excess of  
25 \$300,000.

26    (c) ***Before any mine subsidence insurance coverage can be is-  
27 sued, an inspection must be performed to document the integrity of  
28 insured structures to identify any existing damage to be excluded  
29 from coverage.***

30    Sec. 7. All companies authorized to write basic property insurance  
31 in this state shall enter into a reinsurance agreement with the Kansas  
32 mine subsidence insurance underwriting association in which each com-  
33 pany agrees to cede 100%, up to \$300,000, of any subsidence insurance  
34 underwritten to the association and, in consideration of the ceding com-  
35 mission retained by the company, agrees to undertake payment of taxes  
36 and all other expenses of the company necessary for sale of policies. The  
37 association shall agree to provide a claims adjusting staff and to pay from  
38 the mine subsidence insurance fund all valid policyholder claims resulting  
39 from subsidence.

40    Sec. 8. Thirty percent of all mine subsidence insurance premiums  
41 collected by each insurer for policies delivered, issued for delivery, or  
42 renewed, excluding premiums collected under such policies for mine sub-  
43 sidence insurance coverage which is not reinsured by the mine subsidence

1 insurance underwriting association, shall be retained by the insurer as a  
2 ceding commission. The remainder of such premiums shall be remitted  
3 by the insurer to the mine subsidence insurance underwriting association.

4 Sec. 9. Every mine subsidence insurance underwriting association  
5 member shall report at times designated by the commissioner of insur-  
6 ance the amounts of mine subsidence insurance premiums collected by  
7 such member.

8 Sec. 10. Except in case of fraud by the company, the Kansas mine  
9 subsidence insurance underwriting association shall have no right of re-  
10 course against the company.

11 Sec. 11. Sections 1 through 11, shall be known and may be cited as  
12 the Kansas subsidence insurance act.

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