

## SENATE BILL No. 274

By Committee on Financial Institutions and Insurance

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9 AN ACT concerning insurance; enacting the property/casualty modern-  
10 ization act; amending K.S.A. 40-952 and K.S.A. 2006 Supp. 40-955 and  
11 repealing the existing sections; also repealing K.S.A. 2006 Supp. 40-  
12 955a.

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

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

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

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

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

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

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

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

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

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

1 recognized manner.

2 (q) "Prospective loss cost" means that portion of a rate that does not  
3 include provisions for expenses (other than loss adjustment expenses) or  
4 profit, and are based on historical aggregate losses and loss adjustment  
5 expenses adjusted through development to their ultimate value and pro-  
6 jected through trending to a future point in time.

7 (r) "Rate" means that cost of insurance per exposure unit whether  
8 expressed as a single number or as a prospective loss cost with an ad-  
9 justment to account for the treatment of expenses, profit, and individual  
10 insurer variation in loss experience, prior to any application of individual  
11 risk variations based on loss or expense considerations, and does not in-  
12 clude minimum premiums.

13 (s) "Residual market mechanism" means an arrangement, either vol-  
14 untary or mandated by law, involving participation by insurers in the eq-  
15 uitable apportionment of risks among insurers for insurance which may  
16 be afforded applicants who are unable to obtain insurance through or-  
17 dinary methods.

18 (t) "Special assessments" means guaranty fund assessments, special  
19 indemnity fund assessments, vocational rehabilitation fund assessments,  
20 and other similar assessments. Special assessments shall not be consid-  
21 ered as either expenses or losses.

22 (u) "Supplementary rate information" means any manual or plan of  
23 rates, classification, rating schedule, minimum premium, policy fee, rating  
24 rule and any other similar information needed to determine an applicable  
25 rate in effect or to be in effect.

26 (v) "Supporting information" means:

- 27 (1) The experience and judgment of the filer and the experience or  
28 data of other insurers or organizations relied upon by the filer;  
29 (2) the interpretation of any statistical data relied upon by the filer;  
30 (3) a description of methods used in making the rates; and  
31 (4) any other similar information relied upon by the filer.

32 (w) "Trending" means any procedure for projecting losses to the av-  
33 erage date of loss, or premiums or exposures to the average date of writ-  
34 ing, for the period during which the policies are to be effective.

35 New Sec. 2. This act applies to all kinds of insurance written on risks  
36 in this state by any insurer authorized to do business in this state except:

- 37 (a) Life insurance;  
38 (b) annuities;  
39 (c) accident and health-insurance;  
40 (d) ocean marine insurance;  
41 (e) aircraft liability and aircraft hull insurance;  
42 (f) reinsurance;  
43 (g) surplus lines;

- 1 (h) workers compensation;
- 2 (i) employer's liability insurance;
- 3 (j) title insurance; and
- 4 (k) health care provider insurance required by K.S.A.40-3401 et seq.
- 5 and amendments thereto.

6 New Sec. 3. (a) A competitive market for a line of insurance is pre-  
7 sumed to exist unless the commissioner, after notice and opportunity for  
8 a hearing in accordance with the Kansas administrative procedures act,  
9 determines that a reasonable degree of competition does not exist within  
10 a market and issues a ruling to that effect. The burden of proof in any  
11 hearing shall be placed on the party or parties advocating the position  
12 that competition does not exist. Any ruling that a market is not compet-  
13 itive shall identify the factors causing the market not to be competitive.  
14 Such ruling shall expire one year after issue unless rescinded earlier by  
15 the commissioner or unless the commissioner renews the ruling after a  
16 hearing and a finding as to the continued lack of a reasonable degree of  
17 competition. Any ruling that renews the finding that competition does  
18 not exist shall also identify the factors that cause the market to continue  
19 not to be competitive.

20 (b) The commissioner shall consider the following factors for pur-  
21 poses of determining if a reasonable degree of competition does not exist  
22 in a particular line of insurance:

- 23 (1) The number of insurers or groups of affiliated insurers providing  
24 coverage in the market;
- 25 (2) measures of market concentration and changes of market con-  
26 centration over time;
- 27 (3) ease of entry and the existence of financial or economic barriers  
28 that could prevent new firms from entering the market;
- 29 (4) the extent to which any insurer or group of affiliated insurers  
30 controls all or a portion of the market;
- 31 (5) whether the total number of companies writing the line of insur-  
32 ance in this state is sufficient to provide multiple options;
- 33 (6) the availability of insurance coverage to consumers in the markets;  
34 and
- 35 (7) the opportunities available to consumers in the market to acquire  
36 pricing and other consumer information.

37 (c) The commissioner shall monitor the degree and continued exist-  
38 tence of competition in this state on an on-going basis. In doing so, the  
39 commissioner may utilize existing relevant information, analytical systems  
40 and other sources; or rely on some combination thereof. Such activities  
41 may be conducted internally within the insurance department, in coop-  
42 eration with other state insurance departments, through outside contrac-  
43 tors or in any other manner deemed appropriate by the commissioner.

1 New Sec. 4. (a) Rates shall not be excessive, inadequate or unfairly  
2 discriminatory.

3 (1) For the purposes of this section:

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

7 (B) "Inadequate" means a rate which is unreasonably low for the  
8 insurance provided and:

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

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

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

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

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

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

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

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

31 (B) catastrophic hazards and contingencies;

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

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

34 and

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

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

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

1 (4) Contingencies and profits. The rates shall contain a provision for  
2 contingencies and a provision for a reasonable underwriting profit, and  
3 reflect investment income directly attributable to unearned premium and  
4 loss reserves.

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

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

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

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

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

30 (b) Filings in noncompetitive markets.

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

1 (2) Unless the commissioner informs the insurer within 10 days after  
2 receipt of the filing as to what supplementary rate information or sup-  
3 porting information is required to complete the filing, the filing shall be  
4 deemed to be in compliance with the filing provisions of this section.

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

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

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

24 New Sec. 7. (a) (1) The commissioner shall disapprove a rate in a  
25 competitive market only if the commissioner finds pursuant to subsection  
26 (b) of this section that the rate is inadequate under paragraph 2 of sub-  
27 section (a) of section 4, and amendments thereto, or unfairly discrimi-  
28 natory under subparagraph (B) of paragraph 3 of subsection (a) of section  
29 4 and amendments thereto.

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

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

42 (2) If, at any time, the commissioner finds that a rate applicable to  
43 insurance sold in a noncompetitive market does not comply with the stan-

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

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

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

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

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

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



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

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

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

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

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

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

43 (b) After notice and an opportunity for a hearing, if the commissioner

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

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

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

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

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

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

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

43 New Sec. 12. (a) The commissioner may examine any insurer, pool,

1 advisory organization or residual market mechanism to ascertain compli-  
2 ance with this act.

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

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

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

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

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

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

1 New Sec. 16. (a) After notice and an opportunity for a hearing, the  
2 commissioner may impose a civil penalty of not more than \$500 for each  
3 violation except that if the commissioner determines that such violation  
4 is willful, then the commissioner may impose a penalty of not more than  
5 \$2,000 for each such violation.

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

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

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

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

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

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

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

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

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

1 New Sec. 21. (a) Sections 1 through 21, and amendments thereto,  
2 shall be known as and may be cited as the property/casualty moderniza-  
3 tion act.

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

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

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

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

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

38 Every insurance agent, agency or company authorized to transact title  
39 insurance in this state shall file with the commissioner every manual of  
40 classification, rules and rates, every rating plan, every rate card and every  
41 modification of the foregoing which may be used in connection with pro-  
42 viding title insurance or other services in connection with real estate trans-  
43 actions on property located in counties having a population of 10,000 or

1 more. No charge may be made by any title insurance agent, agency or  
2 company that has not been filed with the commissioner as required by  
3 this section. Any service customarily provided by a title insurance agent  
4 or affiliated entity that is not included in the rates shall be disclosed when  
5 the rates are filed with the commissioner.

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

10 Sec. 23. K.S.A. 2006 Supp. 40-955 is hereby amended to read as  
11 follows: 40-955. (a) Every insurer shall file with the commissioner, except  
12 as to inland marine risks where general custom of the industry is not to  
13 use manual rates or rating plans, every manual of classifications, rules and  
14 rates, every rating plan, policy form and every modification of any of the  
15 foregoing which it proposes to use. Every such filing shall indicate the  
16 proposed effective date and the character and extent of the coverage  
17 contemplated and shall be accompanied by the information upon which  
18 the insurer supports the filings. A filing and any supporting information  
19 shall be open to public inspection after it is filed with the commissioner.  
20 An insurer may satisfy its obligations to make such filings by authorizing  
21 the commissioner to accept on its behalf the filings made by a licensed  
22 rating organization or another insurer. Nothing contained in this act shall  
23 be construed to require any insurer to become a member or subscriber  
24 of any rating organization.

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

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

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

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

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

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

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

34 (2) (A) In the event an insurer or organization has no legally effective  
35 rate because of an order disapproving rates, the commissioner shall spec-  
36 ify an interim rate at the time the order is issued. The interim rate may  
37 be modified by the commissioner on the commissioner’s own motion or  
38 upon motion of an insurer or organization.

39 (B) The interim rate or any modification thereof shall take effect pro-  
40 spectively in contracts of insurance written or renewed 15 days after the  
41 commissioner’s decision setting interim rates.

42 (C) When the rates are finally determined, the commissioner shall  
43 order any overcharge in the interim rates to be distributed appropriately,

1 except refunds to policyholders the commissioner determines are de minimis may not be required.

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3 (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.

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8 (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.

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14 (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.

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19 (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.

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22 (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.

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26 (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.

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29 (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.

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34 (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.

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- 1 (i) For the purposes of this subsection, “large risk” means: (1) An  
2 insured that has total insured property values of \$5,000,000 or more; (2)  
3 an insured that has total annual gross revenues of \$10,000,000 or more;  
4 or (3) an insured that has in the preceding calendar year a total paid  
5 premium of \$50,000 or more for property insurance, \$50,000 or more for  
6 general liability insurance, or \$100,000 or more for multiple lines policies.
- 7 (j) The exemption for any large risk contained in subsection (h) shall  
8 not apply to workers compensation and employer’s liability insurance,  
9 insurance purchasing groups, and the basic coverage required by K.S.A.  
10 40-3401 *et seq.* and amendments thereto.
- 11 (k) Underwriting files, premium, loss and expense statistics, financial  
12 and other records pertaining to special risks written by any insurer shall  
13 be maintained by the insurer and shall be subject to examination by the  
14 commissioner.
- 15 Sec. 24. K.S.A. 40-952 and K.S.A. 2006 Supp. 40-955 and 40-955a  
16 are hereby repealed.
- 17 Sec. 25. This act shall take effect and be in force from and after its  
18 publication in the statute book.