

HOUSE BILL No. 2087

By Committee on Insurance

Requested by Dan Murray on behalf of the Kansas Association of Insurance Agents

1-23

1 AN ACT concerning insurance; relating to nonadmitted insurers; requiring
2 the commissioner of insurance to maintain a list of eligible nonadmitted
3 insurers; authorizing certain nonadmitted insurers to transact business
4 in Kansas with vehicle dealers and to provide excess coverage
5 insurance on Kansas risks; specifying requirements and conditions
6 therefor; amending K.S.A. 8-2405, 40-246b and 40-246e and repealing
7 the existing sections.
8

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

10 Section 1. K.S.A. 8-2405 is hereby amended to read as follows: 8-
11 2405. No dealer's license shall be issued or renewed unless the applicant or
12 holder of the license shall have on file with the division an ~~approved~~
13 insurance policy, issued by an insurance carrier authorized to transact
14 business within the state of Kansas *or issued by an eligible nonadmitted*
15 *insurer pursuant to K.S.A. 40-246e, and amendments thereto.* The term of
16 ~~the~~ *such* policy shall be continuous and shall remain in full force and effect
17 until canceled under proper notice. All policies ~~must~~ *shall* be issued in the
18 name of the holder or applicant for the vehicle dealer's license and shall
19 provide public liability and property damage insurance for the operation of
20 any vehicle by prospective purchasers, owned or being offered for sale by
21 the dealer when being operated by the owner or seller, the seller's agent,
22 servants, employees, prospective customers or other persons. The limits of
23 liability shall correspond to the amount required by law in this state for
24 bodily injury or death of any one person, bodily injury or death in any one
25 accident and property damage. Such insurance, *when issued by an*
26 *authorized insurer*, may not be cancelled unless 30 days' notice by the
27 insurance carrier has been given in writing to the director. Upon the
28 effective date of cancellation of any insurance policy required under this
29 section, the license to engage in business as a dealer shall be void.

30 Sec. 2. K.S.A. 40-246b is hereby amended to read as follows: 40-
31 246b. (a) Upon receipt of a proper application, the commissioner of
32 insurance may issue an excess lines coverage license to any licensed
33 property and casualty agent of this state or any other state. Any agent so
34 licensed may negotiate for insureds whose home state is this state, the
35 types of contracts of fire insurance enumerated in K.S.A. 40-901, and

1 amendments thereto, and the type of casualty insurance contracts
2 enumerated in K.S.A. 40-1102, and amendments thereto, or reinsurance, or
3 to place risks; or to effect insurance or reinsurance for persons or
4 corporations other than such agent; with ~~insurers not authorized to do~~
5 ~~business in this state~~ *nonadmitted insurers eligible pursuant to K.S.A. 40-*
6 *246e, and amendments thereto.* An agent, as defined in K.S.A. 40-4902,
7 and amendments thereto, may place the kind ~~or kinds~~ of business specified
8 in this act for which such agent is licensed pursuant to K.S.A. 40-4903 and
9 ~~subsection (d) of 40-4906, and amendments thereto, with an insurer not~~
10 ~~authorized to do business in this state~~ *eligible nonadmitted insurer* by
11 placing such business with a person licensed pursuant to the provisions of
12 this act and may share in the applicable commissions on such business.
13 Before any such license shall be issued, the applicant shall submit proper
14 application on a form prescribed by the commissioner, which application
15 shall be accompanied by a fee of \$50. Such license shall be renewable
16 each year on May 1, upon the payment of a \$50 fee.

17 (b) The agent so licensed shall on or before March 1 of each year, file
18 with the insurance department of this state, a sworn affidavit or statement
19 to the effect that, after diligent effort, such agent has been unable to secure
20 the amount of insurance required to protect the property, person; or firm
21 described in such agent's affidavit or statement from loss or damage in
22 regularly admitted companies during the preceding year. Mere rate
23 differential shall not be grounds for placing a particular risk ~~in~~ with a
24 ~~nonadmitted carrier insurer~~ when an ~~admitted carrier insurer~~ would accept
25 such risk at a different rate. The licensed excess coverage agent ~~must shall,~~
26 prior to placing insurance with an *eligible nonadmitted insurer* ~~not~~
27 ~~authorized to do business in this state,~~ obtain the written consent of the
28 prospective named insured and provide such insured the following
29 information in a form promulgated by the commissioner:

30 (1) A statement that the coverage will be obtained from an ~~insurer not~~
31 ~~authorized to do business in this state~~ *eligible nonadmitted insurer*;

32 (2) a statement that the ~~insurer's name appears on the list of~~
33 ~~companies maintained by the commissioner~~ *insurer is eligible* pursuant to
34 K.S.A. 40-246e, and amendments thereto;

35 (3) a notice that the insurer's financial condition, policy forms, rates
36 and trade practices are not subject to the review or jurisdiction of the
37 commissioner;

38 (4) a statement that the protection of the guaranty associations is not
39 afforded to policyholders of the insurer; and

40 (5) a statement or notice with respect to any other information
41 deemed necessary by the commissioner pertinent to insuring with an
42 ~~insurer not authorized to do business in this state~~ *eligible nonadmitted*
43 *insurer.*

1 (c) In the event the insured desires that coverage be bound with an
2 ~~insurer not admitted to this state~~ *eligible nonadmitted insurer* and it is not
3 possible to obtain the written consent of the insured prior to binding the
4 coverage, the excess lines agent may bind the coverage after advising the
5 insured of the information set out above and shall obtain written
6 confirmation that the insured desires that coverage be placed with an
7 ~~insurer not admitted to this state~~ *eligible nonadmitted insurer* within 30
8 days after binding coverage.

9 (d) (1) When business comes to a licensed excess lines agent in which
10 this state is the home state for placement with an ~~insurer not authorized to~~
11 ~~do business in this state~~ *eligible nonadmitted insurer* from an agent not
12 licensed as an excess lines agent, it shall be the responsibility of the
13 licensed excess lines agent to ascertain that the insured has been provided
14 the preceding information and has consented to being insured with an
15 ~~insurer not authorized to do business in this state~~ *eligible nonadmitted*
16 *insurer*. Each excess lines agent shall keep a separate record book in such
17 agent's office showing the transactions of fire and casualty insurance and
18 reinsurance placed in ~~companies not authorized to do business in this state~~
19 *eligible nonadmitted insurers*, the amount of gross premiums charged
20 thereon, the insurer with which the policy was placed, the date, term and
21 number of the policy, the location and nature of the risk, the name of the
22 insured and such other information as the commissioner may require and
23 such record shall be available at all times for inspection by the
24 commissioner of insurance or the commissioner's authorized
25 representatives. The commissioner may revoke or suspend any license
26 issued pursuant to the provisions of this act in the same manner and for the
27 same reasons prescribed by K.S.A. 40-4909, and amendments thereto.

28 (2) Any policy issued under the provisions of this statute shall have
29 stamped or endorsed in a prominent manner thereon, the following: This
30 policy is issued by an ~~insurer not authorized to do business~~ *eligible*
31 *nonadmitted insurer* in Kansas and, as such, the form, financial condition
32 and rates are not subject to review by the commissioner of insurance and
33 the insured is not protected by any guaranty fund.

34 (3) If business is placed with a nonadmitted company that is
35 subsequently determined to be insolvent, the excess lines agent placing
36 such business with such company is relieved of any responsibility to the
37 insured as it relates to such insolvency, if the excess lines agent has
38 satisfactorily complied with all requirements of this section pertaining to
39 notification of the insured, has properly obtained the written consent of the
40 insured and has used due diligence in selecting the insurer. It shall be
41 presumed that due diligence was used in selecting the insurer if such
42 insurer was on the list compiled pursuant to K.S.A. 40-246e, and
43 amendments thereto, at the time coverage first became effective.

1 Sec. 3. K.S.A. 40-246e is hereby amended to read as follows: 40-
 2 246e. (a) The commissioner shall maintain a list of ~~insurers not authorized~~
 3 ~~to do business in this state~~ *eligible nonadmitted insurers* for review by any
 4 interested person. Only those insurers who have filed a certified copy of
 5 their most recent annual statement with the commissioner in the form
 6 prescribed by K.S.A. 40-225, and amendments thereto, or; if domiciled
 7 outside the United States, have filed their most recent annual statement
 8 with the national association of insurance commissioners may appear on
 9 the list. ~~No excess lines agent shall place insurance on a Kansas domiciled~~
 10 ~~risk with an insurer whose name does not appear on this list.~~ No company
 11 shall appear on the list whose capital or surplus as shown on the annual
 12 statement does not equal or exceed ~~\$4,500,000~~ *\$15,000,000*. Individual
 13 unincorporated insurers not listed by the national association of insurance
 14 commissioners may appear on the list if they are authorized to transact an
 15 insurance business in at least one state of the United States; *and* possess
 16 assets ~~which~~ *that* are held in trust for the benefit of American
 17 policyholders in the sum of not less than \$50,000,000 ~~and pay the filing~~
 18 ~~fee required by this section.~~ Insurance exchanges ~~who~~ *that* issue contracts
 19 on behalf of their members and pay the filing fee required by this section
 20 may appear on the list if their individual members have a capital or surplus
 21 equal to or in excess of \$1,500,000 and the aggregate capital or surplus of
 22 all members of the exchange is at least \$15,000,000. ~~A nonrefundable~~
 23 ~~filing fee of \$200 shall be required of any insurer submitting its annual~~
 24 ~~statement for review by the commissioner for inclusion on such list.~~

25 (b) The commissioner shall remove an insurer's name from the listing
 26 only when: ~~(a) the:~~

27 ~~The~~ (1) Insurer requests such removal;

28 ~~or~~ (2) insurer fails to file its latest annual statement ~~and~~
 29 ~~required filing fee~~ prior to May 1 of each year as required by this section;
 30 ~~or~~ (c) the

31 (3) commissioner is notified by the insurance supervisory authority of
 32 any state of the United States that such insurer has had its authority to
 33 transact business restricted; or has been declared insolvent or placed in
 34 receivership, conservatorship, rehabilitation or any similar status wherein
 35 the business of the insurer is formally supervised by an insurance
 36 supervisory authority; ~~or~~ (d) the

37 (4) commissioner is notified by the N.A.I.C. that any insurer
 38 domiciled outside the United States has been declared insolvent or placed
 39 in receivership, conservatorship, rehabilitation or any similar status
 40 ~~wherein~~ *in which* the business of the insurer is formally supervised by an
 41 insurance supervisory authority pursuant to an order by any court of
 42 competent jurisdiction; ~~or~~ (e) the

43 (5) insurer has failed to effectuate reasonably prompt, fair and

1 equitable payment of just losses and claims in this state; or
2 ~~(f) the~~(6) insurer encourages, promotes or rewards an agent to violate
3 the provisions of K.S.A. 40-246b, and amendments thereto.

4 *(c) Notwithstanding its inclusion on the list, a nonadmitted insurer*
5 *shall be eligible to place insurance in accordance with K.S.A. 40-246b,*
6 *and amendments thereto, if such insurer meets the eligibility requirements*
7 *of 15 U.S.C. § 8204, as in effect on July 1, 2025.*

8 *(d) There shall be no liability on the part of and no cause of action of*
9 *any nature shall arise against the commissioner, the commissioner's*
10 *employees; or the state of Kansas as a result of any insurer's name*
11 *appearing or not appearing on the list required by this section if such list is*
12 *constructed and maintained in good faith and without malice.*

13 Sec. 4. K.S.A. 8-2405, 40-246b and 40-246e are hereby repealed.

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