

As Amended by House Committee

Session of 2011

**HOUSE BILL No. 2139**

By Committee on Insurance

2-3

1 AN ACT concerning insurance; relating to rates and rate modifications  
2 for workers compensation insurance; amending K.S.A. 40-2109 and  
3 **K.S.A. 2010 Supp. 40-955** and repealing the existing ~~section~~  
4 **sections.**

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

7 **Section 1. K.S.A. 2010 Supp. 40-955 is hereby amended to read**  
8 **as follows: 40-955. (a) Every insurer shall file with the**  
9 **commissioner, except as to inland marine risks where general**  
10 **custom of the industry is not to use manual rates or rating plans,**  
11 **every manual of classifications, rules and rates, every rating plan,**  
12 **policy form and every modification of any of the foregoing which it**  
13 **proposes to use. Every such filing shall indicate the proposed**  
14 **effective date and the character and extent of the coverage**  
15 **contemplated and shall be accompanied by the information upon**  
16 **which the insurer supports the filings. A filing and any supporting**  
17 **information shall be open to public inspection after it is filed with**  
18 **the commissioner. An insurer may satisfy its obligations to make**  
19 **such filings by authorizing the commissioner to accept on its behalf**  
20 **the filings made by a licensed rating organization or another**  
21 **insurer. Nothing contained in this act shall be construed to require**  
22 **any insurer to become a member or subscriber of any rating**  
23 **organization.**

24 **(b) Certificate of insurance forms must be filed with the**  
25 **commissioner of insurance and approved prior to use.**  
26 **Notwithstanding the "large risk" filing exemption in subsection (j),**  
27 **a certificate of insurance cannot be used to modify, alter or amend**  
28 **the insurance policy it describes. The certificate of insurance shall**  
29 **contain the following or similar language: The certificate of**  
30 **insurance neither affirmatively nor negatively amends, extends or**  
31 **alters the coverage afforded by the policies listed thereon. An**  
32 **industry standard setting organization may be authorized by the**  
33 **commissioner of insurance to file certificate of insurance forms on**

1 **behalf of authorized insurers.**

2 **(c) Any rate filing for the basic coverage required by K.S.A.**  
3 **40-3401 et seq., and amendments thereto, loss costs filings for**  
4 **workers compensation, and rates for assigned risk plans**  
5 **established by article 21 of chapter 40 of the Kansas Statutes**  
6 **Annotated, and amendments thereto, or rules and regulations**  
7 **established by the commissioner shall require approval by the**  
8 **commissioner before its use by the insurer in this state. As soon as**  
9 **reasonably possible after such filing has been made, the**  
10 **commissioner shall in writing approve or disapprove the same,**  
11 **except that any filing shall be deemed approved unless disapproved**  
12 **within 30 days of receipt of the filing.**

13 **(d) Any other rate filing, except personal lines filings, shall**  
14 **become effective on filing or any prospective date selected by the**  
15 **insurer, subject to the commissioner disapproving the same if the**  
16 **rates are determined to be inadequate, excessive, unfairly**  
17 **discriminatory or otherwise fails to meet the requirements of this**  
18 **act. *Subject to the provisions of K.S.A. 40-954, and amendments***  
19 ***thereto, an insurer may file up to four workers compensation loss cost***  
20 ***multipliers and up to four policy holder dividend plans within a single***  
21 ***insurer. Eligibility for individual loss cost multipliers and dividend***  
22 ***plans shall be based on insurer underwriting criteria and judgment.***  
23 **Personal lines rate filings shall be on file for a waiting period of 30**  
24 **days before becoming effective, subject to the commissioner**  
25 **disapproving the same if the rates are determined to be inadequate,**  
26 **excessive, unfairly discriminatory or otherwise fail to meet**  
27 **requirements of this act. The term "personal lines" shall mean**  
28 **insurance for noncommercial automobile, homeowners, dwelling**  
29 **fire-and-renters insurance policies, as defined by the commissioner**  
30 **by rules and regulations. A filing complies with this act unless it is**  
31 **disapproved by the commissioner within the waiting period or**  
32 **pursuant to subsection (f).**

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

1       **(f) (1) (A)** If a filing is not accompanied by the information  
2 required by this act, the commissioner shall promptly inform the  
3 company or organization making the filing. The filing shall be  
4 deemed to be complete when the required information is received  
5 by the commissioner or the company or organization certifies to the  
6 commissioner the information requested is not maintained by the  
7 company or organization and cannot be obtained.

8       **(B)** If the commissioner finds a filing does not meet the  
9 requirements of this act, the commissioner shall send to the insurer  
10 or rating organization that made the filing, written notice of  
11 disapproval of the filing, specifying in what respects the filing fails  
12 to comply and stating the filing shall not become effective.

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

23       **(2) (A)** In the event an insurer or organization has no legally  
24 effective rate because of an order disapproving rates, the  
25 commissioner shall specify an interim rate at the time the order is  
26 issued. The interim rate may be modified by the commissioner on  
27 the commissioner's own motion or upon motion of an insurer or  
28 organization.

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

32       **(C)** When the rates are finally determined, the commissioner  
33 shall order any overcharge in the interim rates to be distributed  
34 appropriately, except refunds to policyholders the commissioner  
35 determines are de minimis may not be required.

36       **(3) (A)** Any person or organization aggrieved with respect to  
37 any filing that is in effect may make written application to the  
38 commissioner for a hearing thereon, except that the insurer or  
39 rating organization that made the filing may not proceed under this

1 subsection. The application shall specify the grounds to be relied on  
2 by the applicant.

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

10 (C) Every rating organization receiving a notice of hearing or  
11 copy of an order under this section, shall promptly notify all its  
12 members or subscribers affected by the hearing or order. Notice to  
13 a rating organization of a hearing or order shall be deemed notice  
14 to its members or subscribers.

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

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

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

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

31 (i) Except for workers compensation and employer's liability  
32 line, the following categories of commercial lines risks are  
33 considered special risks which are exempt from the filing  
34 requirements in this section: (1) Risks that are written on an excess  
35 or umbrella basis; (2) commercial risks, or portions thereof, that  
36 are not rated according to manuals, rating plans, or schedules  
37 including "a" rates; (3) large risks; and (4) special risks designated  
38 by the commissioner, including but not limited to risks insured  
39 under highly protected risks rating plans, commercial aviation,

1 credit insurance, boiler and machinery, inland marine, fidelity,  
2 surety and guarantee bond insurance risks.

3 (j) For the purposes of this subsection, "large risk" means: (1)  
4 An insured that has total insured property values of \$5,000,000 or  
5 more; (2) an insured that has total annual gross revenues of  
6 \$10,000,000 or more; or (3) an insured that has in the preceding  
7 calendar year a total paid premium of \$50,000 or more for  
8 property insurance, \$50,000 or more for general liability insurance,  
9 or \$100,000 or more for multiple lines policies.

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

15 (l) Underwriting files, premium, loss and expense statistics,  
16 financial and other records pertaining to special risks written by  
17 any insurer shall be maintained by the insurer and shall be subject  
18 to examination by the commissioner.

19 ~~Section 1.~~ **Sec. 2.** K.S.A. 40-2109 is hereby amended to read as  
20 follows: 40-2109. Every insurer undertaking to transact in this state the  
21 business of either workers compensation or employer's liability  
22 insurance or both, and every rating organization which files rates for  
23 such insurance shall cooperate in the preparation and submission to the  
24 commissioner of insurance of a plan or plans, for the equitable  
25 apportionment among insurers of applicants for insurance who are in  
26 good faith, entitled to but who are unable to procure through ordinary  
27 methods, such insurance. Such plan or plans shall provide:

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

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

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

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

1 (1) Seven members who shall be appointed as follows: Three of  
2 such members shall be representatives of foreign insurance companies,  
3 two members shall be representatives of domestic insurance companies  
4 and two members shall be licensed independent insurance agents. Such  
5 members shall be appointed for a term of three years, except that the  
6 initial appointment shall include two members appointed for a two-year  
7 term and two members appointed for a one-year term, as designated by  
8 the commissioner; and

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

11 The commissioner shall review the plan as soon as reasonably  
12 possible after filing in order to determine whether it meets the  
13 requirements set forth in subsections (a) and (c) above. As soon as  
14 reasonably possible after the plan has been filed the commissioner shall  
15 in writing approve or disapprove the same, except that any plan shall be  
16 deemed approved unless disapproved within 45 days. Subsequent to the  
17 waiting period the commissioner may disapprove any plan on the  
18 ground that it does not meet the requirements set forth in subsections  
19 (a), (b) and (c) above, but only after a hearing held upon not less than  
20 10 days' written notice to every insurer and rating organization affected  
21 specifying the matter to be considered at such hearing, and only by an  
22 order specifying in what respect the commissioner finds that such plan  
23 fails to meet such requirements and stating when within a reasonable  
24 period thereafter such plan shall be deemed no longer effective. Such  
25 order shall not affect any assignment made or policy issued or made  
26 prior to the expiration of the period set forth in such order.  
27 Amendments to such plan or plans shall be prepared, and filed and  
28 reviewed in the same manner as herein provided with respect to the  
29 original plan or plans.

30 If no plan meeting the standards set forth in subsections (a), (b) and  
31 (c) is submitted to the commissioner within the period stated in any  
32 order, disapproving an existing plan the commissioner shall, if  
33 necessary to carry out the purpose of this section after hearing, prepare  
34 and promulgate a plan meeting such requirements. When such plan or  
35 plans or amendments thereto have been approved or promulgated, no  
36 insurer shall thereafter issue a policy of workers compensation or  
37 employer's liability insurance or undertake to transact such business in  
38 this state unless such insurer shall participate in such an approved or  
39 promulgated plan. If, after a hearing conducted in accordance with the

1 provisions of the Kansas administrative procedure act, the  
2 commissioner finds that any activity or practice of any insurer or rating  
3 organization in connection with the operation of such plan or plans is  
4 unfair or unreasonable or otherwise inconsistent with the provisions of  
5 this section the commissioner may issue a written order specifying in  
6 what respects such activity or practice is unfair or unreasonable or  
7 otherwise inconsistent with the provisions of this section and requiring  
8 discontinuance of such activity or practice.

9 (e) The commissioner shall approve rates and rate modifications  
10 for each plan that provides workers compensation insurance pursuant to  
11 this section which, over a period of time, but no later than January 1,  
12 1997, will reduce the assessments levied by the plan to less than 10%.  
13 If the commissioner finds that the percentage of the total Kansas  
14 workers compensation premium volume written by the plan has not  
15 decreased below 20% of the total amount of such premium volume by  
16 December 31, 1998, the provisions of this subsection shall no longer  
17 apply and the commissioner may cause the governing board of the plan  
18 to file new rates and rate modifications pursuant to this section.  
19 Notwithstanding the foregoing provisions of this subsection, the  
20 commissioner shall not approve rates or rating plans which produce  
21 rates or premiums for risks with less than \$2,250 annual premium that  
22 are higher than those which would be applied to such risks in the  
23 voluntary market, except that this. *This* provision shall not prohibit the  
24 application of surcharges, experience modifications or other rating  
25 variables based on the claims experience of individual risks.

26 ~~Sec. 2.~~ **3.** K.S.A. 40-2109 is **and K.S.A. 2010 Supp. 40-955 are**  
27 hereby repealed.

28 ~~Sec. 3.~~ **4.** This act shall take effect and be in force from and after  
29 its publication in the statute book.