

**As Amended by House Committee**

*Session of 2012*

**HOUSE BILL No. 2637**

By Committee on Commerce and Economic Development

2-6

1 AN ACT concerning workers in shared employment arrangements;  
2 amending K.S.A. 2011 Supp. 40-955 and repealing the existing section.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2011 Supp. 40-955 is hereby amended to read as  
6 follows: 40-955. (a) Every insurer shall file with the commissioner, except  
7 as to inland marine risks where general custom of the industry is not to use  
8 manual rates or rating plans, every manual of classifications, rules and  
9 rates, every rating plan, policy form and every modification of any of the  
10 foregoing which it proposes to use. Every such filing shall indicate the  
11 proposed effective date and the character and extent of the coverage  
12 contemplated and shall be accompanied by the information upon which the  
13 insurer supports the filings. A filing and any supporting information shall  
14 be open to public inspection after it is filed with the commissioner, except  
15 that disclosure shall not be required for any information contained in a  
16 filing or in any supporting documentation for the filing when such  
17 information is either a trade secret or copyrighted. For the purposes of this  
18 section, the term "trade secret" shall have the meaning ascribed to it in  
19 K.S.A. 60-3320, and amendments thereto. An insurer may satisfy its  
20 obligations to make such filings by authorizing the commissioner to accept  
21 on its behalf the filings made by a licensed rating organization or another  
22 insurer. Nothing contained in this act shall be construed to require any  
23 insurer to become a member or subscriber of any rating organization.

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

34 (c) Any rate filing for the basic coverage required by K.S.A. 40-3401  
35 et seq., and amendments thereto, loss costs filings for workers  
36 compensation, and rates for assigned risk plans established by article 21 of

1 chapter 40 of the Kansas Statutes Annotated or rules and regulations  
2 established by the commissioner shall require approval by the  
3 commissioner before its use by the insurer in this state. As soon as  
4 reasonably possible after such filing has been made, the commissioner  
5 shall in writing approve or disapprove the same, except that any filing  
6 shall be deemed approved unless disapproved within 30 days of receipt of  
7 the filing.

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

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

27 (f) (1) (A) If a filing is not accompanied by the information required  
28 by this act, the commissioner shall promptly inform the company or  
29 organization making the filing. The filing shall be deemed to be complete  
30 when the required information is received by the commissioner or the  
31 company or organization certifies to the commissioner the information  
32 requested is not maintained by the company or organization and cannot be  
33 obtained.

34 (B) If the commissioner finds a filing does not meet the requirements  
35 of this act, the commissioner shall send to the insurer or rating  
36 organization that made the filing, written notice of disapproval of the  
37 filing, specifying in what respects the filing fails to comply and stating the  
38 filing shall not become effective.

39 (C) If at any time after a filing becomes effective, the commissioner  
40 finds a filing does not comply with this act, the commissioner shall after a  
41 hearing held on not less than 10 days' written notice to every insurer and  
42 rating organization that made the filing issue an order specifying in what  
43 respects the filing failed to comply with the act, and stating when, within a

1 reasonable period thereafter, the filing shall be no longer effective. Copies  
2 of the order shall be sent to such insurer or rating organization. The order  
3 shall not affect any contract or policy made or issued prior to the  
4 expiration of the period set forth in the order.

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

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

13 (C) When the rates are finally determined, the commissioner shall  
14 order any overcharge in the interim rates to be distributed appropriately,  
15 except refunds to policyholders the commissioner determines are de  
16 minimis may not be required.

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

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

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

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

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

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

42 (h) The commissioner may adopt rules and regulations to allow  
43 suspension or modification of the requirement of filing and approval of

1 rates as to any kind of insurance, subdivision or combination thereof, or as  
2 to classes of risks, the rates for which cannot practicably be filed before  
3 they are used.

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

14 (j) For the purposes of this subsection, "large risk" means: (1) An  
15 insured that has total insured property values of \$5,000,000 or more; (2) an  
16 insured that has total annual gross revenues of \$10,000,000 or more; or (3)  
17 an insured that has in the preceding calendar year a total paid premium of  
18 \$50,000 or more for property insurance, \$50,000 or more for general  
19 liability insurance, or \$100,000 or more for multiple lines policies.

20 (k) The exemption for any large risk contained in subsection (h) shall  
21 not apply to workers compensation and employer's liability insurance,  
22 insurance purchasing groups, and the basic coverage required by K.S.A.  
23 40-3401 et seq., and amendments thereto.

24 (l) Underwriting files, premium, loss and expense statistics, financial  
25 and other records pertaining to special risks written by any insurer shall be  
26 maintained by the insurer and shall be subject to examination by the  
27 commissioner.

28 (m) (1) *Except as permitted by paragraph (2)*, any entity that  
29 purchases a workers compensation policy for the covered employees of  
30 more than one employer pursuant to a shared employment relationship  
31 with each employer must purchase the workers compensation policy on a  
32 separate multiple coordinate policy basis. Such workers compensation  
33 policies must be issued pursuant to K.S.A. 44-501 et seq., and  
34 amendments thereto, from an insurer holding a certificate of authority to  
35 do business in this state and providing workers compensation coverage.

36 (2) ~~The commissioner of insurance may allow an insurer to issue~~  
37 ~~coverage through a master policy if the commissioner is satisfied that the~~  
38 ~~insurer is able to track and report individual client experience to the~~  
39 ~~advisory organization in an acceptable fashion. All such master policies~~  
40 ~~must be filed with the commissioner for prior approval. The use of master~~  
41 ~~policies for the covered employees of more than one employer pursuant to~~  
42 ~~a shared employment relationship shall be permitted if such master policy~~  
43 ~~is filed with the commissioner at least 30 days prior to the use of such~~

1 *master policy and the commissioner is satisfied that the insurer is able to*  
2 *track and report individual client experience to the advisory organization*  
3 *in an acceptable fashion. If the commissioner determines that the master*  
4 *policy or the insurer cannot track and report individual client experience*  
5 *to the advisory organization in an acceptable fashion, the commissioner*  
6 *shall disapprove such master policy and shall notify the insurer in writing.*  
7 *Any insurer who issues a policy which is disapproved under this statute*  
8 *shall be entitled to a hearing before the commissioner.*

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

12 (4) *The provisions of this subsection shall not apply to any workers*  
13 *compensation policies purchased on or before ~~December 31~~ **March 31,***  
14 *2013.*

15 Sec. 2. K.S.A. 2011 Supp. 40-955 is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its  
17 publication in the statute book.

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