

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.

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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

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

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

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

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

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

41 (C) If at any time after a filing becomes effective, the commissioner
42 finds a filing does not comply with this act, the commissioner shall after a
43 hearing held on not less than 10 days' written notice to every insurer and

1 rating organization that made the filing issue an order specifying in what
2 respects the filing failed to comply with the act, and stating when, within a
3 reasonable period thereafter, the filing shall be no longer effective. Copies
4 of the order shall be sent to such insurer or rating organization. The order
5 shall not affect any contract or policy made or issued prior to the
6 expiration of the period set forth in the order.

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

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

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

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

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

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

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

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

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

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

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

16 (j) For the purposes of this subsection, "large risk" means: (1) An
17 insured that has total insured property values of \$5,000,000 or more; (2) an
18 insured that has total annual gross revenues of \$10,000,000 or more; or (3)
19 an insured that has in the preceding calendar year a total paid premium of
20 \$50,000 or more for property insurance, \$50,000 or more for general
21 liability insurance, or \$100,000 or more for multiple lines policies.

22 (k) The exemption for any large risk contained in subsection (h) shall
23 not apply to workers compensation and employer's liability insurance,
24 insurance purchasing groups, and the basic coverage required by K.S.A.
25 40-3401 et seq., and amendments thereto.

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

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

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

1 *a shared employment relationship shall be permitted if such master policy*
2 *is filed with the commissioner at least 30 days prior to the use of such*
3 *master policy and the commissioner is satisfied that the insurer is able to*
4 *track and report individual client experience to the advisory organization*
5 *in an acceptable fashion. If the commissioner determines that the master*
6 *policy or the insurer cannot track and report individual client experience*
7 *to the advisory organization in an acceptable fashion, the commissioner*
8 *shall disapprove such master policy and shall notify the insurer in writing.*
9 *Any insurer who issues a policy which is disapproved under this statute*
10 *shall be entitled to a hearing before the commissioner.*

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

14 ~~(4) The provisions of this subsection shall not apply to any workers-~~
15 ~~compensation policies purchased on or before December 31, **March 31,**~~
16 ~~2013.~~

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

18 Sec. 3. This act shall take effect and be in force from and after {}
19 **{March 31, 2013, and}** its publication in the statute book.

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