

## HOUSE BILL No. 2615

By Committee on Commerce, Labor and Economic Development

2-11

1 AN ACT concerning workers compensation insurance; pertaining to the  
2 assigned risk pool; amending K.S.A. 2013 Supp. 40-2109 and repealing  
3 the existing section.

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

6 Section 1. K.S.A. 2013 Supp. 40-2109 is hereby amended to read as  
7 follows: 40-2109. (a) (1) Every insurer undertaking to transact in this state  
8 the business of either workers compensation or employer's liability  
9 insurance or both, and every rating organization which files rates for such  
10 insurance shall cooperate in the preparation and submission to the  
11 commissioner of insurance of a plan or plans, for the equitable  
12 apportionment among insurers of applicants for insurance who are in good  
13 faith, entitled to but who are unable to procure through ordinary methods,  
14 such insurance. Such plan or plans shall provide:

15 ~~(a)~~ (A) Reasonable rules governing the equitable distribution of risks  
16 by direct insurance, reinsurance or otherwise and their assignment to  
17 insurers;

18 ~~(b)~~ (B) rates and rate modifications applicable to such risks which  
19 shall be reasonable, adequate and not unfairly discriminatory;

20 ~~(c)~~ (C) a method whereby applicants for insurance, insured and  
21 insurers may have a hearing on grievances and the right of appeal to the  
22 commissioner;

23 ~~(d)~~ (D) for every such plan or plans, there shall be a governing board  
24 ~~to be appointed by the commissioner of insurance~~ which shall meet at least  
25 annually to review and prescribe operating rules, ~~and which~~ select a  
26 chairperson and select the plan administrator through a competitive bid  
27 process that shall provide for a contract with such plan administrator. The  
28 term of such contract shall not exceed five years.

29 (i) The competitive bid process shall be initiated by the issuance of a  
30 request for proposal which shall:

31 (a) Establish all requirements and specifications which the successful  
32 bidder must meet;

33 (b) not contain any set of requirements and specifications which will  
34 limit the set of potential candidate bidders to one candidate;

35 (c) not provide any preference for the existing plan administrator;

36 (d) require the candidate bidder to list all administrative costs,

1 *service fees, costs of administering reinsurance, and any other costs or*  
2 *expenses which will be charged to the assigned risk pool; and*

3 *(e) provide a list of all sources of income or revenue which the bidder*  
4 *expects to receive if such bidder is awarded the bid.*

5 *(ii) The existing plan administrator may submit a bid, but such plan*  
6 *administrator shall not participate in any review of the bids received or in*  
7 *the selection of the successful bidder.*

8 *(iii) The governing board shall consist of the following members:*

9 ~~*(1) seven members who shall be appointed as follows: Three of such*~~  
10 ~~*members shall be representatives of foreign insurance companies, two*~~  
11 ~~*members shall be representatives of domestic insurance companies and*~~  
12 ~~*two members shall be licensed independent insurance agents. Such*~~  
13 ~~*members shall be appointed for a term of three years, except that the initial*~~  
14 ~~*appointment shall include two members appointed for a two-year term and*~~  
15 ~~*two members appointed for a one-year term, as designated by the*~~  
16 ~~*commissioner; and*~~

17 ~~*(2) Two members representative of the general public interest with*~~  
18 ~~*such members to be appointed for a term of two years.*~~

19 *(a) One member shall be appointed by the Kansas chamber of*  
20 *commerce for a term of two years;*

21 *(b) one member shall be appointed by the national federation of*  
22 *independent business for a term of one year;*

23 *(c) one member shall be appointed from the Kansas association of*  
24 *insurance agents for a term of two years;*

25 *(d) one member shall be appointed by a domestic insurance company*  
26 *selected by the commissioner of insurance for a term of two years;*

27 *(e) two members shall be appointed by two district foreign insurance*  
28 *companies selected by the commissioner of insurance for a term of one*  
29 *year; and*

30 *(f) one member shall be appointed by the commissioner of insurance*  
31 *for a term of three years.*

32 *(iv) The terms of all board members existing on the day preceding the*  
33 *effective date of this act shall terminate on the effective date of this act.*  
34 *This subparagraph shall not prohibit any such board member from being*  
35 *appointed to the new governing board.*

36 *(v) Such members shall be appointed for a term of three years. No*  
37 *appointee shall serve more than two consecutive terms; and*

38 *(E) for the performance of an independent financial audit. Such audit*  
39 *shall be performed annually on the financial results of the plan. Such audit*  
40 *shall include, but not be limited to:*

41 *(i) Premiums written and earned;*

42 *(ii) losses paid;*

43 *(iii) incurred losses;*

1 (iv) taxes; and

2 (v) administration and servicing carrier allowances.

3 (2) In addition, such plan or plans may provide that:

4 (A) The designated plan administrator establish an office located in  
5 the state of Kansas to improve services provided by the plan and to  
6 promote and secure courteous and timely service;

7 (B) money collected for the account of the assigned risk pool may be  
8 held in a separate fiduciary account maintained by a federally chartered  
9 financial institution domiciled in the state of Kansas. Such fiduciary  
10 account shall be used for all payments made on behalf of the assigned risk  
11 plan; and

12 (C) in the event, there is a surplus amount in any policy year which  
13 exceeds 5% of the total amount of premiums collected, such surplus may  
14 be distributed to the policyholders.

15 (b) The commissioner shall review the plan as soon as reasonably  
16 possible after filing in order to determine whether it meets the  
17 requirements set forth in ~~subsections (a) and (c) above~~ subsection (a)(1).  
18 As soon as reasonably possible after the plan has been filed the  
19 commissioner shall in writing approve or disapprove the same, except that  
20 any plan shall be deemed approved unless disapproved within 45 days.  
21 Subsequent to the waiting period the commissioner may disapprove any  
22 plan on the ground that it does not meet the requirements set forth in  
23 ~~subsections (a), (b) and (c) above~~ subsection (a)(1), but only after a  
24 hearing held upon not less than 10 days' written notice to every insurer and  
25 rating organization affected specifying the matter to be considered at such  
26 hearing, and only by an order specifying in what respect the commissioner  
27 finds that such plan fails to meet such requirements and stating when  
28 within a reasonable period thereafter such plan shall be deemed no longer  
29 effective. Such order shall not affect any assignment made or policy issued  
30 or made prior to the expiration of the period set forth in such order.  
31 Amendments to such plan or plans shall be prepared, and filed and  
32 reviewed in the same manner as herein provided with respect to the  
33 original plan or plans.

34 (c) If no plan meeting the standards set forth in ~~subsections (a), (b)~~  
35 ~~and (c)~~ subsection (a)(1) is submitted to the commissioner within the  
36 period stated in any order, disapproving an existing plan the commissioner  
37 shall, if necessary to carry out the purpose of this section after hearing,  
38 prepare and promulgate a plan meeting such requirements. When such  
39 plan or plans or amendments thereto have been approved or promulgated,  
40 no insurer shall thereafter issue a policy of workers compensation or  
41 employer's liability insurance or undertake to transact such business in this  
42 state unless such insurer shall participate in such an approved or  
43 promulgated plan. If, after a hearing conducted in accordance with the

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

9 ~~(e)~~ (d) The commissioner shall approve rates and rate modifications  
10 for each plan that provides workers compensation insurance. This  
11 provision shall not prohibit the application of surcharges, experience  
12 modifications or other rating variables.

13 Sec. 2. K.S.A. 2013 Supp. 40-2109 is hereby repealed.

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

16