

SENATE BILL No. 144

By Committee on Financial Institutions and Insurance

2-4

1 AN ACT relating to insurance; concerning excess lines coverage;
2 amending K.S.A. 2014 Supp. 40-246b and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 2014 Supp. 40-246b is hereby amended to read as
7 follows: 40-246b. (a) Upon receipt of a proper application, the
8 commissioner of insurance may issue an excess lines coverage license to
9 any licensed property and casualty agent of this state or any other state.
10 Any agent so licensed may negotiate for insureds whose home state is this
11 state, the types of contracts of fire insurance enumerated in K.S.A. 40-901,
12 and amendments thereto, and the type of casualty insurance contracts
13 enumerated in K.S.A. 40-1102, and amendments thereto, or reinsurance, or
14 to place risks, or to effect insurance or reinsurance for persons or
15 corporations other than such agent, with insurers not authorized to do
16 business in this state. An agent, as defined in K.S.A. 2014 Supp. 40-4902,
17 and amendments thereto, may place the kind or kinds of business specified
18 in this act for which such agent is licensed pursuant to K.S.A. 2014 Supp.
19 40-4903 and ~~subsection (d) of 40-4906(d)~~, and amendments thereto, with
20 an insurer not authorized to do business in this state by placing such
21 business with a person licensed pursuant to the provisions of this act and
22 may share in the applicable commissions on such business. Before any
23 such license shall be issued, the applicant shall submit proper application
24 on a form prescribed by the commissioner, which application shall be
25 accompanied by a fee of \$50. Such license shall be renewable each year on
26 May 1, upon the payment of a \$50 fee.

27 (b) The agent so licensed shall ~~on or before March 1 of each year, file~~
28 ~~with the insurance department of this state, a sworn affidavit or maintain,~~
29 *available to the insurance department of this state upon request, a signed*
30 *statement to the effect that, after diligent effort, such agent has been unable*
31 *to secure the amount of insurance required to protect the property, person,*
32 *or firm described in such agent's* ~~affidavit or~~ *statement from loss or*
33 *damage in regularly admitted companies during the preceding year. Mere*
34 *rate differential shall not be grounds for placing a particular risk in a*
35 *nonadmitted carrier when an admitted carrier would accept such risk at a*
36 *different rate. The licensed excess coverage agent must, prior to placing*

1 insurance with an insurer not authorized to do business in this state, obtain
2 the written consent of the prospective named insured and provide such
3 insured the following information in a form promulgated by the
4 commissioner:

5 (1) A statement that the coverage will be obtained from an insurer not
6 authorized to do business in this state;

7 (2) a statement that the insurer's name appears on the list of
8 companies maintained by the commissioner pursuant to K.S.A. 40-246e,
9 and amendments thereto;

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

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

15 (5) a statement or notice with respect to any other information
16 deemed necessary by the commissioner pertinent to insuring with an
17 insurer not authorized to do business in this state.

18 (c) In the event the insured desires that coverage be bound with an
19 insurer not admitted to this state and it is not possible to obtain the written
20 consent of the insured prior to binding the coverage, the excess lines agent
21 may bind the coverage after advising the insured of the information set out
22 above and shall obtain written confirmation that the insured desires that
23 coverage be placed with an insurer not admitted to this state within 30
24 days after binding coverage.

25 (d) When business comes to a licensed excess lines agent in which
26 this state is the home state for placement with an insurer not authorized to
27 do business in this state from an agent not licensed as an excess lines
28 agent, it shall be the responsibility of the licensed excess lines agent to
29 ascertain that the insured has been provided the preceding information and
30 has consented to being insured with an insurer not authorized to do
31 business in this state. Each excess lines agent shall keep a separate record
32 book in such agent's office showing the transactions of fire and casualty
33 insurance and reinsurance placed in companies not authorized to do
34 business in this state, the amount of gross premiums charged thereon, the
35 insurer with which the policy was placed, the date, term and number of the
36 policy, the location and nature of the risk, the name of the insured and such
37 other information as the commissioner may require and such record shall
38 be available at all times for inspection by the commissioner of insurance or
39 the commissioner's authorized representatives. The commissioner may
40 revoke or suspend any license issued pursuant to the provisions of this act
41 in the same manner and for the same reasons prescribed by K.S.A. 2014
42 Supp. 40-4909, and amendments thereto.

43 Any policy issued under the provisions of this statute shall have

1 stamped or endorsed in a prominent manner thereon, the following: This
2 policy is issued by an insurer not authorized to do business in Kansas and,
3 as such, the form, financial condition and rates are not subject to review by
4 the commissioner of insurance and the insured is not protected by any
5 guaranty fund.

6 If business is placed with a nonadmitted company that is subsequently
7 determined to be insolvent, the excess lines agent placing such business
8 with such company is relieved of any responsibility to the insured as it
9 relates to such insolvency, if the excess lines agent has satisfactorily
10 complied with all requirements of this section pertaining to notification of
11 the insured, has properly obtained the written consent of the insured and
12 has used due diligence in selecting the insurer. It shall be presumed that
13 due diligence was used in selecting the insurer if such insurer was on the
14 list compiled pursuant to K.S.A. 40-246e, and amendments thereto, at the
15 time coverage first became effective.

16 Sec. 2. K.S.A. 2014 Supp. 40-246b is hereby repealed.

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