

SENATE BILL No. 145

By Committee on Financial Institutions and Insurance

2-4

1 AN ACT concerning insurance; relating to nonadmitted insurers
2 authorized to write excess coverage on Kansas risks; amending K.S.A.
3 2014 Supp. 40-246b and 40-246e and repealing the existing sections.
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 statement
29 to the effect that, after diligent effort, such agent has been unable to secure
30 the amount of insurance required to protect the property, person, or firm
31 described in such agent's affidavit or statement from loss or damage in
32 regularly admitted companies during the preceding year. Mere rate
33 differential shall not be grounds for placing a particular risk in a
34 nonadmitted carrier when an admitted carrier would accept such risk at a
35 different rate. The licensed excess coverage agent must, prior to placing
36 insurance with an insurer not authorized to do business in this state, obtain

1 the written consent of the prospective named insured and provide such
2 insured the following information in a form promulgated by the
3 commissioner:

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

6 ~~(2) a statement that the insurer's name appears on the list of~~
7 ~~companies maintained by the commissioner, but that meets the~~
8 ~~requirements to be eligible to write excess coverage on risks where Kansas~~
9 ~~is the home state of the insured pursuant to K.S.A. 40-246e, and~~
10 ~~amendments thereto;~~

11 ~~(3)~~(2) a notice that the insurer's financial condition, policy forms,
12 rates and trade practices are not subject to the review or jurisdiction of the
13 commissioner;

14 ~~(4)~~(3) a statement that the protection of the guaranty associations is
15 not afforded to policyholders of the insurer; and

16 ~~(5)~~(4) a statement or notice with respect to any other information
17 deemed necessary by the commissioner pertinent to insuring with an
18 insurer not authorized to do business in this state.

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

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

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

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

17 Sec. 2. K.S.A. 2014 Supp. 40-246e is hereby amended to read as
18 follows: 40-246e. *(a) When Kansas is the home state of the insured, a*
19 *licensed excess lines agent shall not place coverage with a nonadmitted*
20 *insurer; unless, at the time of placement, the agent has determined that the*
21 *nonadmitted insurer:*

22 *(1) (A) Is authorized to write the kind of insurance in its domiciliary*
23 *jurisdiction in the United States; and (B) has capital and surplus or its*
24 *equivalent under the laws of its domiciliary jurisdiction in the United*
25 *States, which equals the greater of the minimum capital and surplus*
26 *requirements under the laws of this state or \$15,000,000, except that an*
27 *insurer may possess less than such capital and surplus amount upon an*
28 *affirmative finding of acceptability by the commissioner provided that the*
29 *finding shall be based upon such factors as quality of management, capital*
30 *and surplus of any parent company, company underwriting profit and*
31 *investment income trends, market availability and company record and*
32 *reputation within the industry, and in no event shall the director make an*
33 *affirmative finding of acceptability when the nonadmitted insurer's capital*
34 *and surplus is less than \$4,500,000;*

35 *(2) appears on the most recent quarterly listing of alien insurers*
36 *maintained by the international insurers department (IID) of the national*
37 *association of insurance commissioners (NAIC) (the "NAIC-IID list");*

38 *(3) if an insurer domiciled outside the United States that is not on the*
39 *most recent NAIC-IID list satisfies requirements that the commissioner is*
40 *hereby authorized to adopt by rules and regulations; or*

41 *(4) if an insurance exchange that issues contracts on behalf of its*
42 *members, the exchange's individual members have capital or surplus*
43 *equal to or in excess of \$1,500,000 and the aggregate capital or surplus of*

1 *all members of the exchange is at least \$15,000,000.*

2 (b) The commissioner ~~shall~~ may maintain a list of *nonadmitted*
3 ~~insurers not authorized to do business~~ *eligible to write excess coverage* in
4 this state *under subsection (a)* for review by any interested person. ~~Only~~
5 ~~those insurers who have filed~~ *In order to be included on any such list,*
6 *insurers domiciled in the United States must file a certified copy of their*
7 *most recent annual statement with the commissioner in the form*
8 *prescribed by K.S.A. 40-225, and amendments thereto, or, if along with a*
9 *certified copy of their certificate of authority from their state of domicile.*
10 *The commissioner shall include on any such list all insurers domiciled*
11 *outside the United States, have filed their most recent annual statement*
12 *with the national association of insurance commissioners may appear on*
13 *the list. No excess lines agent shall place insurance on a Kansas domiciled*
14 *risk with an insurer whose name does not appear on this list. No company*
15 *shall appear on the list whose capital or surplus as shown on the annual*
16 *statement does not equal or exceed \$4,500,000. Individual unincorporated*
17 *insurers not listed by the national association of insurance commissioners*
18 *may appear on the list if they are authorized to transact an insurance*
19 *business in at least one state of the United States, possess assets which are*
20 *held in trust for the benefit of American policyholders in the sum of not*
21 *less than \$50,000,000 and pay the filing fee required by this section.*
22 *Insurance exchanges who issue contracts on behalf of their members and*
23 *pay the filing fee required by this section may appear on the list if their*
24 *individual members have a capital or surplus equal to or in excess of*
25 *\$1,500,000 and the aggregate capital or surplus of all members of the*
26 *exchange is at least \$15,000,000 that appear on the most recent NAIC-IID*
27 *list. A nonrefundable filing fee of \$200 shall be required of any insurer*
28 *submitting its annual statement for review by the commissioner for*
29 *seeking inclusion on such list.*

30 (c) The commissioner shall remove an insurer's name from the listing
31 only when: ~~(a)~~(1) The insurer requests such removal; ~~or~~ ~~(b)~~(2) the insurer
32 fails to file its latest annual statement and required filing fee prior to May
33 1 of each year as required by this section; ~~or~~ ~~(c)~~(3) the commissioner is
34 notified by the insurance supervisory authority of any state of the United
35 States that such insurer has had its authority to transact business restricted;
36 or has been declared insolvent or placed in receivership, conservatorship,
37 rehabilitation or any similar status wherein the business of the insurer is
38 formally supervised by an insurance supervisory authority; ~~or~~ ~~(d)~~(4) the
39 commissioner is notified by the N.A.I.C. that any insurer domiciled
40 outside the United States has been declared insolvent or placed in
41 receivership, conservatorship, rehabilitation or any similar status wherein
42 the business of the insurer is formally supervised by an insurance
43 supervisory authority pursuant to an order by any court of competent

1 jurisdiction; ~~or (e)(5)~~ the insurer has failed to effectuate reasonably
2 prompt, fair and equitable payment of just losses and claims in this state;
3 or ~~(f)(6)~~ the insurer encourages, promotes or rewards an agent to violate
4 the provisions of K.S.A. 40-246b, and amendments thereto. There shall be
5 no liability on the part of and no cause of action of any nature shall arise
6 against the commissioner, the commissioner's employees, or the state of
7 Kansas as a result of any insurer's name appearing or not appearing on the
8 list required by this section if such list is constructed and maintained in
9 good faith and without malice.

10 Sec. 3. K.S.A. 2014 Supp. 40-246b and 40-246e are hereby repealed.

11 Sec. 4. This act shall take effect and be in force from and after its
12 publication in the statute book.