

SENATE BILL No. 155

By Committee on Financial Institutions and Insurance

2-5

1 AN ACT concerning surplus lines insurance; defining terms; relating to
2 gross premiums and tax thereon; amending K.S.A. 2014 Supp. 40-246c
3 and repealing the existing section; also repealing K.S.A. 2014 Supp.
4 40-5701.

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

7 New Section 1. The following definitions shall apply to K.S.A. 2014
8 Supp. 40-246b through 40-246e, and amendments thereto, and section 3,
9 and amendments thereto:

10 (a) "Exempt commercial purchaser" means any person purchasing
11 commercial insurance that, at the time of placement, meets the following
12 requirements:

13 (1) The person employs or retains a qualified risk manager to
14 negotiate insurance coverage;

15 (2) the person has paid aggregate nationwide commercial property
16 and casualty insurance premiums in excess of \$100,000 in the immediately
17 preceding 12 months; and

18 (3) the person:

19 (A) Possesses a net worth in excess of \$20,040,000, except that this
20 amount shall be adjusted every five years by rules and regulations of the
21 commissioner of insurance to account for the percentage change in the
22 consumer price index;

23 (B) generates annual revenues in excess of \$55,100,000, except that
24 this amount shall be adjusted every five years by rules and regulations of
25 the commissioner of insurance to account for the percentage change in the
26 consumer price index;

27 (C) employs more than 500 full-time or full-time-equivalent
28 employees per insured entity or is a member of an affiliated group
29 employing more than 1,000 employees in the aggregate;

30 (D) is a not-for-profit organization or public entity generating annual
31 budgeted expenditures of at least \$33,060,000, except that this amount
32 shall be adjusted every five years by rules and regulations of the
33 commissioner of insurance to account for the percentage change in the
34 consumer price index; or

35 (E) is a municipality with a population in excess of 50,000 persons;

36 (b) "Home state." (1) In general, except as provided in subparagraph

1 (2), the term "home state" means, with respect to an insured:

2 (A) The state in which an insured maintains its principal place of
3 business or, in the case of an individual, the individual's principal
4 residence; or

5 (B) if 100% of the insured risk is located out of the state referred to in
6 subparagraph (1)(A), the state to which the greatest percentage of the
7 insured's taxable premium for that insurance contract is allocated.

8 (2) Affiliated groups. If more than one insured from an affiliated
9 group are named insureds on a single non-admitted insurance contract, the
10 term "home state" means the home state, as determined pursuant to
11 subparagraph (1), of the member of the affiliated group that has the largest
12 percentage of premium attributed to it under such insurance contract.

13 (c) "Non-admitted insurer" means an insurer that is not authorized or
14 admitted to transact the business of insurance under the law of the home
15 state.

16 (d) "Principal place of business" means with respect to determining
17 the home state of the insured, the state where the insured maintains its
18 headquarters and where the insured's high-level officers direct, control and
19 coordinate the business activities of the insured.

20 (e) "Surplus lines insurance" means insurance procured by a surplus
21 lines licensee from a surplus lines insurer or other non-admitted insurer as
22 permitted under the law of the home state. "Surplus lines insurance" shall
23 also mean excess lines insurance as may be defined by applicable state
24 law.

25 Sec. 2. K.S.A. 2014 Supp. 40-246c is hereby amended to read as
26 follows: 40-246c. (a) On March 1 of each year, each licensed agent shall
27 collect and pay to the commissioner ~~a sum based on the total gross~~
28 ~~premiums charged~~ *tax of 6% on the total gross premiums charged*, less any
29 return premiums, for surplus lines insurance ~~provided~~ *transacted* by the
30 licensee pursuant to the license. ~~Where the insurance covers properties,~~
31 ~~risks or exposures located or to be performed both in and out of this state,~~
32 ~~the sum payable shall be computed based on:~~

33 (1) ~~An amount equal to 6% of that portion of the gross premiums~~
34 ~~allocated to this state; plus~~

35 (2) ~~an amount equal to the portion of the premiums allocated to other~~
36 ~~states or territories on the basis of the tax rates and fees applicable to~~
37 ~~properties, risks or exposures located or to be performed outside of this~~
38 ~~state; less~~

39 (3) ~~the amount of gross premiums allocated to this state and returned~~
40 ~~to the insured for insureds whose home state is this state.~~

41 (b) The tax on any portion of the premium unearned at termination of
42 insurance, if any, having been credited by the state to the licensee shall be
43 returned to the policyholder directly by the surplus lines licensee or

1 through the producing broker. The surplus lines licensee is prohibited from
2 rebating any part of the tax for any reason. ~~To the extent that other states~~
3 ~~where portions of the properties, risks or exposures reside have failed to~~
4 ~~enter into a compact or reciprocal allocation procedure with this state, the~~
5 ~~net premium tax collected shall be retained by this state.~~

6 (c) The individual responsible for filing the statement shall be the
7 agent who signs the policy or the agent of record with the company. The
8 commissioner of insurance shall collect double the amount of tax herein
9 provided from any licensee or other responsible individual as herein
10 described who shall fail, refuse or neglect to transmit the required affidavit
11 or statement or shall fail to pay the tax imposed by this section, to the
12 commissioner within the period specified.

13 New Sec. 3. A surplus lines producer seeking to place non-admitted
14 insurance for an exempt commercial purchaser is not required to file the
15 signed statement under K.S.A. 2014 Supp. 40-246b, and amendments
16 thereto, if the surplus lines producer has disclosed to the exempt
17 commercial purchaser that such insurance may or may not be available
18 from the admitted market that may provide greater protection with more
19 regulatory oversight and the exempt commercial purchaser has
20 subsequently requested in writing the surplus lines producer to procure or
21 place such insurance from a non-admitted insurer.

22 New Sec. 4. The commissioner of insurance may adopt such rules
23 and regulations as are reasonable, necessary and incidental to the
24 enforcement and administration of the provisions of K.S.A. 2014 Supp.
25 40-246b through 40-246e and section 3, and amendments thereto.

26 Sec. 5. K.S.A. 2014 Supp. 40-246c and 40-5701 are hereby repealed.

27 Sec. 6. This act shall take effect and be in force from and after its
28 publication in the statute book.