

SENATE BILL No. 423

By Committee on Financial Institutions and Insurance

1-30

1 AN ACT concerning insurance; reducing the number of board members
2 appointed by the commissioner on certain insurance-related governing
3 boards and the frequency of the meetings of the committee on surety
4 bonds and insurance; amending K.S.A. 40-2102, 40-2109, 40-3116, 40-
5 3413, 65-34,126 and 75-4101 and repealing the existing sections.

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

8 Section 1. K.S.A. 40-2102 is hereby amended to read as follows: 40-
9 2102. (a) Every insurer undertaking to transact in the state of Kansas the
10 business of automobile and motor vehicle bodily injury and property
11 damage liability insurance and every rating organization ~~which that~~ files
12 rates for such insurance shall cooperate in ~~the preparation and submission~~
13 *preparing and submitting a plan* to the commissioner of insurance ~~of a~~
14 ~~plan or plans~~ for the equitable apportionment among insurers of applicants
15 for insurance who are in good faith; entitled to but ~~who~~ are unable to
16 procure through ordinary methods; such insurance. Such plan or plans
17 shall provide:

18 (a)(1) Reasonable rules governing the equitable distribution of risks
19 by direct insurance, reinsurance or otherwise and their assignment to
20 insurers, including provisions requiring, at the request of the applicant, an
21 immediate assumption of the risk by an insurer or insurers upon
22 completion of an application, payment of the specified premium and
23 deposit the application and the premium in the United States mail, postage
24 prepaid and addressed to the plan's office;

25 (b)(2) rates and rate modifications applicable to such risks ~~which that~~
26 shall be reasonable, adequate and not unfairly discriminatory;

27 (c)(3) the limits of liability ~~which that~~ the insurer shall be required to
28 assume;

29 (d)(4) a method ~~whereby~~ *by which* applicants for insurance, insureds
30 and insurers may have a hearing on grievances and the right of appeal to
31 the commissioner; *and*

32 (e)(5) ~~for every such plan or plans, there shall be a governing board~~
33 *for every such plan or plans*, to be appointed by the commissioner of
34 insurance, which shall meet at least annually to review and prescribe
35 operating rules; ~~and which.~~

36 (A) *Such board shall consist of the following members:*

1 ~~(1)~~—seven members who shall be appointed *prior to December 31,*
2 *2024*, as follows:

3 (i) Three of such members shall be representatives of foreign
4 insurance companies, two members shall be representatives of domestic
5 insurance companies, and two members shall be licensed independent
6 insurance agents. Such members shall be appointed for a term of three
7 years, except that the initial appointment shall include two members
8 appointed for a two-year term and two members appointed for a one-year
9 term as designated by the commissioner; and

10 ~~(2)~~(ii) two members, representative of the general public interest,
11 with such members to be appointed for a term of two years.

12 (B) *The terms of the members appointed and serving on the*
13 *governing board as of July 1, 2024, shall expire on December 31, 2024.*
14 *The commissioner shall appoint a governing board for the plan which*
15 *shall serve on and after January 1, 2025, and shall have the same powers,*
16 *duties and functions as its predecessor. On and after January 1, 2025, all*
17 *members of the governing board shall serve three-year terms, except that*
18 *such members shall be removable by the commissioner for inefficiency,*
19 *neglect of duty or malfeasance. Such board shall consist of five members*
20 *to be appointed as follows:*

21 (i) *Three members shall be representatives of insurers;*

22 (ii) *one member shall be a representative of independent insurance*
23 *agents; and*

24 (iii) *one member shall be a representative of the general public.*

25 (C) *In making appointments to the governing board, the*
26 *commissioner shall consider if foreign and domestic insurers are fairly*
27 *represented.*

28 (b) (1) The commissioner shall review the plan as soon as reasonably
29 possible after filing in order to determine whether it meets the
30 requirements set forth in ~~(a), (b), (c) and (d)~~ ~~above subsections (a)(1)~~
31 *through (a)(4)*. As soon as reasonably possible after the plan has been
32 filed, the commissioner shall, in writing, approve or disapprove ~~the same~~
33 *such plan*. Any plan shall be deemed approved unless disapproved within
34 45 days. Subsequent to the waiting period, the commissioner may
35 disapprove any plan on the ~~ground~~ *grounds* that ~~it~~ *such plan* does not meet
36 the requirements set forth in ~~(a), (b), (c) and (d)~~ ~~above subsections (a)(1)~~
37 *through (a)(4)*, but only after a hearing held upon not less than 10 days'
38 written notice to every insurer and rating organization affected specifying
39 the matter to be considered at such hearing; and only by an order
40 specifying in what respect the commissioner finds that such plan fails to
41 meet such requirements; and stating when, within a reasonable period
42 thereafter, such plan shall be deemed no longer effective. Such order shall
43 not affect any assignment made or policy issued or made prior to the

1 expiration of the period set forth in such order. Amendments to such plan
 2 or plans shall be prepared; and filed and reviewed in the same manner as
 3 ~~herein~~ provided *in this section* with respect to the original plan or plans.

4 (2) If no plan meeting the standards set forth in ~~(a), (b), (c) and (d)~~
 5 *subsections (a)(1) through (a)(4)* is submitted to the commissioner within
 6 the period stated in any order disapproving an existing plan, the
 7 commissioner shall, if necessary to carry out the purpose of this section
 8 after hearing, prepare and promulgate a plan meeting such requirements.
 9 If, after a hearing conducted in accordance with the provisions of the
 10 Kansas administrative procedure act, the commissioner finds that any
 11 activity or practice of any insurer or rating organization in connection with
 12 the operation of such plan or plans is unfair or unreasonable or otherwise
 13 inconsistent with the provisions of this subsection, the commissioner may
 14 issue a written order specifying in what respects such activity or practice is
 15 unfair or unreasonable or otherwise inconsistent with the provisions of this
 16 subsection and requiring discontinuance of such activity or practice.

17 Sec. 2. K.S.A. 40-2109 is hereby amended to read as follows: 40-
 18 2109. (a) Every insurer undertaking to transact in this state the business of
 19 either workers compensation or employer's liability insurance, or both, and
 20 every rating organization ~~which~~ *that* files rates for such insurance shall
 21 cooperate in the ~~preparation and submission~~ *preparing and submitting a*
 22 *plan* to the commissioner of insurance ~~of a plan or plans~~, for the equitable
 23 apportionment among insurers of applicants for insurance who are in good
 24 faith; entitled to but ~~who~~ are unable to procure ~~through ordinary methods~~,
 25 such insurance *through ordinary methods*. Such plan or plans shall
 26 provide:

27 ~~(a)(1)~~ Reasonable rules governing the equitable distribution of risks
 28 by direct insurance, reinsurance or otherwise and their assignment to
 29 insurers;

30 ~~(b)(2)~~ rates and rate modifications applicable to such risks ~~which~~ *that*
 31 shall be reasonable, adequate and not unfairly discriminatory;

32 ~~(c)(3)~~ a method ~~whereby~~ *by which* applicants for insurance, insured
 33 and insurers may have a hearing on grievances and the right of appeal to
 34 the commissioner; *and*

35 ~~(d)(4)~~ ~~for every such plan or plans, there shall be~~ a governing board,
 36 *for every such plan or plans*, to be appointed by the commissioner of
 37 insurance, which shall meet at least annually to review and prescribe
 38 operating rules, ~~and which~~.

39 (A) *Such governing board* shall consist of ~~the following members~~:

40 ~~(1)~~ seven members who shall be appointed *prior to December 31,*
 41 *2024*, as follows:

42 (i) Three of such members shall be representatives of foreign
 43 insurance companies; *and* two members shall be representatives of

1 domestic insurance companies, and two members shall be licensed
 2 independent insurance agents. Such *five* members shall be appointed for a
 3 term of three years, except that the initial appointment shall include two
 4 members appointed for a two-year term and two members appointed for a
 5 one-year term, as designated by the commissioner; and

6 ~~(2)~~(ii) two members, representative of the general public interest,
 7 with such members to be appointed for a term of two years.

8 *(B) The terms of the members appointed and serving on the*
 9 *governing board as of July 1, 2024, shall expire on December 31, 2024.*

10 *The commissioner shall appoint a governing board for the plan which*
 11 *shall serve on and after January 1, 2025, and shall have the same powers,*
 12 *duties, and functions as its predecessor. Members shall be appointed for*
 13 *three-year terms except that such members shall be removable by the*
 14 *commissioner for inefficiency, neglect of duty or malfeasance. Such board*
 15 *shall consist of five members to be appointed as follows:*

16 *(i) Three members shall be representatives of insurance companies;*

17 *(ii) one member shall be a licensed independent insurance agent; and*

18 *(iii) one member shall be a representative of the general public*
 19 *interest.*

20 *(C) In selecting the members who shall be representatives of insurers,*
 21 *the commissioner shall consider whether foreign and domestic insurers*
 22 *are fairly represented.*

23 *(b) (1) The commissioner shall review the plan as soon as reasonably*
 24 *possible after filing in order to determine whether it meets the*
 25 *requirements set forth in subsections (a)(1) and ~~(e) above~~ (a)(3). As soon*
 26 *as reasonably possible after the plan has been filed, the commissioner*
 27 *shall, in writing, approve or disapprove ~~the same such plan,~~ except that*
 28 *any plan shall be deemed approved unless disapproved within 45 days.*
 29 *Subsequent to the waiting period, the commissioner may disapprove any*
 30 *plan on the ~~ground~~ grounds that ~~it~~ such plan does not meet the*
 31 *requirements set forth in subsections (a), ~~(b)~~ and ~~(e) above~~ (1) through (a)*
 32 *(3), but only after a hearing held upon not less than 10 days' written notice*
 33 *to every insurer and rating organization affected specifying the matter to*
 34 *be considered at such hearing; and only by an order specifying in what*
 35 *respect the commissioner finds that such plan fails to meet such*
 36 *requirements and stating when, within a reasonable period thereafter, such*
 37 *plan shall be deemed no longer effective. Such order shall not affect any*
 38 *assignment made or policy issued or made prior to the expiration of the*
 39 *period set forth in such order. Amendments to such plan or plans shall be*
 40 *prepared, ~~and~~ filed and reviewed in the same manner as ~~herein~~ provided in*
 41 *this section with respect to the original plan or plans.*

42 *(2) If no plan meeting the standards set forth in subsections (a)(1), ~~(b)~~*
 43 *and ~~(e)~~ through (a)(3) is submitted to the commissioner within the period*

1 stated in any order; disapproving an existing plan, the commissioner shall,
2 if necessary to carry out the purpose of this section after hearing, prepare
3 and promulgate a plan meeting such requirements. When such plan or
4 plans or amendments thereto have been approved or promulgated, no
5 insurer shall thereafter issue a policy of workers compensation or
6 employer's liability insurance or undertake to transact such business in this
7 state unless such insurer shall participate in such an approved or
8 promulgated plan. If, after a hearing conducted in accordance with the
9 provisions of the Kansas administrative procedure act, the commissioner
10 finds that any activity or practice of any insurer or rating organization in
11 connection with the operation of such plan or plans is unfair or
12 unreasonable or otherwise inconsistent with the provisions of this section,
13 the commissioner may issue a written order specifying in what respects
14 such activity or practice is unfair or unreasonable or otherwise inconsistent
15 with the provisions of this section and requiring discontinuance of such
16 activity or practice.

17 ~~(e)~~(c) The commissioner shall approve rates and rate modifications
18 for each plan that provides workers compensation insurance. This
19 provision shall not prohibit the application of surcharges, experience
20 modifications or other rating variables.

21 Sec. 3. K.S.A. 40-3116 is hereby amended to read as follows: 40-
22 3116. (a) Insurers and self-insurers are hereby directed to organize and
23 maintain an assigned claims plan to provide that any person; who suffers
24 injury in this state may obtain personal injury protection benefits through
25 such plan if:

26 (1) Personal injury protection benefits are not available to the injured
27 person, except that personal injury protection benefits shall not be deemed
28 unavailable to any person suffering injury while such person was the
29 operator of a motorcycle or motor-driven cycle, for which the owner
30 thereof has rejected personal injury protection benefits pursuant to
31 ~~subsection (f) of~~ K.S.A. 40-3107, and amendments thereto;

32 (2) motor vehicle liability insurance or self-insurance applicable to
33 the injury cannot be identified;

34 (3) personal injury protection benefits applicable to the injury are
35 inadequate to provide the contracted-for benefits because of financial
36 inability of an insurer or self-insurer to fulfill its obligation; ~~however,~~
37 *except that* benefits available through the assigned claims plan shall be
38 excess over any benefits paid or payable through the Kansas insurance
39 guaranty association. If the personal injury protection benefits are not paid
40 by the Kansas insurance guaranty association within the limitation of time
41 specified in this act, such benefits shall be paid by the assigned claims
42 plan. Payments made by the assigned claims plan pursuant to this section
43 shall constitute covered claims under K.S.A. 40-2901 et seq., and

1 amendments thereto.

2 (b) If a claim qualifies for assignment under this section, the assigned
3 claims plan or any insurer or self-insurer to whom the claim is assigned
4 shall be subrogated to all of the rights of the claimant against any insurer
5 or self-insurer, its successor in interest or substitute, legally obligated to
6 provide personal injury protection benefits to the claimant, for any of such
7 benefits provided by the assignment.

8 (c) A person shall not be entitled to personal injury protection
9 benefits through the assigned claims plan with respect to injury ~~which~~ *that*
10 such person has sustained if, at the time of such injury, such person was
11 the owner of a motor vehicle for which a policy of motor vehicle liability
12 insurance is required under this act and such person failed to have such
13 policy in effect.

14 (d) The assigned claims plan shall be governed by such rules and
15 regulations as are necessary for its operation and for the assessment of
16 costs, which shall be approved by the commissioner. Any claim brought
17 through said plan shall be assigned to an insurer or self-insurer, in
18 accordance with the approved regulations of operation, and such insurer or
19 self-insurer, after the assignment, shall have the same rights and
20 obligations *as* it would have if, prior to such assignment, it had issued a
21 motor vehicle liability insurance policy providing personal injury
22 protection benefits applicable to the loss or expenses incurred or was a
23 self-insurer providing such benefits. Any party accepting benefits
24 ~~hereunder~~ *under this section* shall have such rights and obligations as such
25 person would have if a motor vehicle liability insurance policy providing
26 personal injury protection benefits were issued to such person.

27 (e) No insurer shall write any motor vehicle liability insurance policy
28 in this state unless the insurer participates in the assigned claims plan
29 organized pursuant to this section, nor shall any person qualify as a self-
30 insurer pursuant to ~~subsection (f)~~ of K.S.A. 40-3104, and amendments
31 thereto, unless such person agrees to participate in such assigned claims
32 plan. Any insurer or self-insurer required to participate in the assigned
33 claims plan who violates this subsection shall be assessed a civil penalty of
34 not more than \$5,000 for each policy issued or self-insurance certificate
35 obtained in violation thereof.

36 (f) (1) *On and after January 1, 2025, the governing committee of the*
37 *assigned claims plan shall consist of five members, who shall be*
38 *removable by the commissioner for inefficiency, neglect of duty or*
39 *malfesance. Members shall be appointed as follows:*

40 (A) *Three members shall be representatives of insurers;*

41 (B) *one member shall be a representative of independent insurance*
42 *agents; and*

43 (C) *one member shall be a representative of the general public.*

1 (2) *In selecting the members who shall be representatives of insurers,*
 2 *the commissioner shall consider whether foreign and domestic insurers*
 3 *are fairly represented.*

4 Sec. 4. K.S.A. 40-3413 is hereby amended to read as follows: 40-
 5 3413. (a) Every insurer and every rating organization shall cooperate in the
 6 preparation of a plan or plans for the equitable apportionment among such
 7 insurers of applicants for professional liability insurance and such other
 8 liability insurance as may be included in or added to the plan, who are, in
 9 good faith, entitled to such insurance but are unable to procure the ~~same~~
 10 *insurance* through ordinary methods. Such plan or plans shall be prepared
 11 and filed with the commissioner and the board of governors within a
 12 reasonable time but not exceeding 60 calendar days from ~~the effective date~~
 13 ~~of this act~~ *July 1, 1976*. Such plan or plans shall provide:

14 (1) Reasonable rules governing the equitable distribution of risks by
 15 direct insurance, reinsurance or otherwise including the authority to make
 16 assessments against the insurers participating in the plan or plans;

17 (2) rates and rate modifications applicable to such risks ~~which that~~
 18 shall be reasonable, adequate and not unfairly discriminatory;

19 (3) a method whereby periodically the plan shall compare the
 20 premiums earned to the losses and expenses sustained by the plan. If there
 21 is any surplus of premiums over losses and expenses received for that year
 22 such surplus shall be transferred to the fund. If there is any excess of losses
 23 and expenses over premiums earned, such losses shall be transferred from
 24 the fund, ~~however~~ *except that* such transfers shall not occur more often
 25 than once each three months;

26 (4) the limits of liability ~~which that~~ the plan shall be required to
 27 provide, ~~but in no event shall~~ *except that* such limits *shall not* be less than
 28 those limits provided for in ~~subsection (a) of~~ K.S.A. 40-3402, and
 29 amendments thereto;

30 (5) a method ~~whereby~~ *by which* applicants for insurance, insureds and
 31 insurers may have a hearing on grievances and the right of appeal to the
 32 commissioner.

33 (b) (1) For every such plan or plans, there shall be a governing board
 34 ~~which that~~ shall meet at least annually to review and prescribe operating
 35 rules. *Prior to December 31, 2024*, such board of directors shall consist of
 36 nine members to be appointed, for terms of four years, by the
 37 commissioner as follows:

38 ~~(+)~~(A) Two members *who* shall be representatives of foreign insurers;

39 ~~(-)~~(B) two members *who* shall be representatives of domestic
 40 insurers;

41 ~~(-)~~(C) two members *who* shall be ~~health care~~ *healthcare* providers;

42 ~~(+)~~(D) one member *who* shall be a licensed insurance agent actively
 43 engaged in the solicitation of casualty insurance;

1 (5)(E) one member *who* shall be the chairperson of the board of
2 governors or the chairperson's designee; and

3 (6)(F) one member *who* shall be a representative of the general
4 public.

5 (2) *The members of the governing board appointed on or before July*
6 *1, 2024, shall serve their current terms which shall expire on December*
7 *31, 2024. On and after January 1, 2025, the board of directors shall*
8 *consist of five members, who shall be appointed for a term of four years*
9 *except that such members shall be removable by the commissioner for*
10 *inefficiency, neglect of duty or malfeasance as follows:*

11 (A) *One member who shall be a representative of foreign insurers;*

12 (B) *one member who shall be a representative of domestic insurers;*

13 (C) *one member who shall be a healthcare provider;*

14 (D) *one member who shall be a licensed insurance agent engaged in*
15 *the solicitation of casualty insurance; and*

16 (E) *one member who shall be the chairperson of the board of*
17 *directors or the chairperson's designee.*

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

36 (d) If no plan meeting the standards set forth in subsection (a) is
37 submitted to the commissioner and board of directors within 60 calendar
38 days from ~~the effective date of this act~~ *July 1, 1982*, or within the period
39 stated in any order disapproving an existing plan, the commissioner with
40 the assistance of the board of directors shall after a hearing, if necessary to
41 carry out the purpose of this act, prepare and promulgate a plan meeting
42 such requirements.

43 (e) If, after a hearing conducted in accordance with the provisions of

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

9 (f) An insurer participating in the plan approved by the commissioner
10 may pay a commission with respect to insurance written under the plan to
11 an insurance agent licensed for any other insurer participating in the plan
12 or to any insurer participating in the plan. Such commission shall be
13 reasonably equivalent to the usual customary commission paid on similar
14 types of policies issued in the voluntary market.

15 ~~(g) Notwithstanding the provisions of K.S.A. 40-3402, and~~
16 ~~amendments thereto, the plan shall make available policies of professional~~
17 ~~liability insurance covering prior acts. Such professional liability insurance~~
18 ~~policies shall have limits of coverage not exceeding \$1,000,000 per claim,~~
19 ~~subject to not more than \$3,000,000 annual aggregate liability for all~~
20 ~~claims made as a result of personal injury or death arising out of the~~
21 ~~rendering of or the failure to render professional services within this state~~
22 ~~on or before December 31, 2014. Such professional liability insurance~~
23 ~~policies shall be made available only to physician assistants licensed by~~
24 ~~the state board of healing arts, licensed advanced practice registered nurses~~
25 ~~authorized by the state board of nursing to practice as an advanced practice~~
26 ~~registered nurse in the classification of a nurse-midwife, nursing facilities~~
27 ~~licensed by the state of Kansas, assisted living facilities licensed by the~~
28 ~~state of Kansas and residential health care facilities licensed by the state of~~
29 ~~Kansas that will be in compliance with K.S.A. 40-3402, and amendments~~
30 ~~thereto, on January 1, 2015. The premiums for such professional liability~~
31 ~~insurance policies shall be based upon reasonably prudent actuarial~~
32 ~~principles. The provisions of this subsection shall expire on January 1,~~
33 ~~2016.~~

34 Sec. 5. K.S.A. 65-34,126 is hereby amended to read as follows: 65-
35 34,126. (a) The commissioner of insurance shall adopt and implement a
36 plan for applicants for insurance who are in good faith entitled to
37 insurance necessary to achieve compliance with the financial
38 responsibility requirements for third-party liability imposed by 40 C.F.R.
39 part 280, subpart H, and part 281 adopted by the federal environmental
40 protection agency. Insurers undertaking to transact the kinds of insurance
41 specified in ~~subsection (b) or (c) of K.S.A. 40-1102, and amendments~~
42 ~~thereto, and rating organizations which that~~ file rates for such insurance
43 shall cooperate in the preparation and submission to the commissioner of

1 insurance of a plan or plans for the insurance specified in this section.

2 Such plan shall provide:

3 (1) Insurance necessary to achieve compliance with the financial
4 responsibility requirements for third-party liability imposed by 40 C.F.R.
5 part 280, subpart H, and part 281;

6 (2) for the appointment by the plan of a servicing carrier ~~which that~~
7 shall be:

8 (A) An insurance company authorized to transact business in this
9 state;

10 (B) an insurance company ~~which that~~ is listed with the commissioner
11 pursuant to K.S.A. 40-246e, and amendments thereto; or

12 (C) a risk retention group, as defined by K.S.A. 40-4101, and
13 amendments thereto, ~~which that~~ meets the requirements established under
14 the federal liability risk retention act of 1986 (15 U.S.C. 3901 et seq.),
15 and has registered with the commissioner pursuant to K.S.A. 40-4103, and
16 amendments thereto;

17 (3) reasonable rules governing the plan, including provisions
18 requiring, at the request of the applicant, an immediate assumption of the
19 risk by an insurer or insurers upon completion of an application, payment
20 of the specified premium and deposit of the application and the premium in
21 the United States mail, postage prepaid and addressed to the plan's
22 office;

23 (4) rates and rate modifications applicable to such risks, which rates
24 shall be established as provided by subsection (b);

25 (5) the limits of liability ~~which that~~ the insurer shall be required to
26 assume;

27 (6) coverage for only underground storage tanks located within this
28 state;

29 (7) coverage for at least 12 months from the date of the original
30 application with respect to any underground storage tank ~~which that~~ has
31 been installed for less than 10 years, and may provide such coverage with
32 respect to any such tank ~~which that~~ has been installed 10 or more years,
33 without requiring tank integrity tests, soil tests or other tests for
34 insurability if, within six months immediately preceding application for
35 insurance, the tank has been made to comply with all provisions of federal
36 and state law, and all applicable rules and regulations adopted pursuant
37 thereto, but the plan may provide for renewal or continuation of such
38 coverage to be contingent upon satisfactory evidence that the tank or tanks
39 to be insured continue to be in compliance with such laws and rules and
40 regulations;

41 (8) exclusion from coverage of any damages for noneconomic loss
42 and any damages resulting from intentional acts of the insured or agents of
43 the insured;

1 (9) to the extent allowed by law, subrogation of the insurer to all
2 rights of recovery from other sources for damages covered by the plan or
3 plans;

4 (10) an optional deductible of the first \$2,500, \$5,000 or \$10,000 of
5 liability per occurrence at any one location for compensation of third
6 parties for bodily injury and property damage caused by either gradual or
7 sudden and accidental releases from underground petroleum storage tanks,
8 but no such deductible shall apply to reasonable and necessary attorney
9 fees and other reasonable and necessary expenses incurred in defending a
10 claim for such compensation;

11 (11) coverage only of claims for occurrences that commenced during
12 the term of the policy and that are discovered and reported to the insurer
13 during the policy period or within six months after the effective date of the
14 cancellation or termination of the policy;

15 (12) a method whereby applicants for insurance, insureds and
16 insurers may have a hearing on grievances and the right of appeal to the
17 commissioner;

18 (13) a method whereby adequate reserves are established for open
19 claims and claims incurred but not reported based on advice from an
20 independent actuary retained by the plan at least annually, the cost of
21 which shall be borne by the plan;

22 (14) a method whereby the plan shall compare the premiums earned
23 to the losses and expenses sustained by the plan for the preceding fiscal
24 year and if, for that year:

25 (A) There is any excess of losses and expenses over premiums
26 earned, plus amounts transferred pursuant to subsection (a)(15), an amount
27 equal to such excess losses and expenses shall be transferred from the
28 underground fund established by K.S.A. 65-34,114, and amendments
29 thereto, to the plan; or

30 (B) there is any surplus of premiums earned, plus amounts transferred
31 pursuant to subsection (a)(15), over losses, including loss reserves, and
32 expenses sustained, ~~+1/2~~ 1/2 of such surplus shall be transferred to such fund
33 from the plan and the remaining ~~+1/2~~ 1/2 of such surplus shall be refunded
34 from the plan to the insureds in proportion to the amount each paid into the
35 plan during the preceding fiscal year; and

36 (15) a method ~~whereby~~ *by which*, during any fiscal year, whenever
37 the losses and expenses sustained by the plan exceed premiums earned, an
38 amount equal to the excess of losses and expenses shall be transferred
39 from the underground fund established by K.S.A. 65-34,114, and
40 amendments thereto, to the plan upon receipt by the secretary of health and
41 environment of evidence, satisfactory to the secretary, of the amount of the
42 excess losses and expenses.

43 (b) The commissioner of insurance shall establish rates, effective

1 January 1 of each year, for coverage provided under the plan adopted
 2 pursuant to this section. Such rates shall be reasonable, adequate and not
 3 unfairly discriminatory. Such rates shall be based on loss and expense
 4 experience developed by risks insured by the plan and shall be in an
 5 amount deemed sufficient by the commissioner to fund anticipated claims
 6 based upon reasonably prudent actuarial principles, except that:

7 (1) Due consideration shall be given to the loss and expense
 8 experience developed by similar plans operating or trust funds offering
 9 third party liability coverage in other states and the voluntary market; and

10 (2) before January 1, 1992, the annual rate shall be not more than
 11 \$500 for each tank for which coverage is provided under the plan with
 12 selection of a \$10,000 deductible.

13 In establishing rates pursuant to this subsection, the commissioner shall
 14 establish, as appropriate, lower rates for tanks complying with all federal
 15 standards, including design, construction, installation, operation and
 16 release detection standards, with which such tanks are or will be required
 17 to comply by 40 C.F.R. part 280 as in effect on ~~the effective date of this act~~
 18 *May 17, 1990*.

19 (c) (1) The commissioner of insurance shall appoint a governing
 20 board for the plan. *Members shall be appointed for terms of three years,*
 21 *except that the initial appointment shall include two members appointed*
 22 *for two-year terms and one member appointed for a one-year term, as*
 23 *designated by the commissioner.* The governing board shall meet at least
 24 annually to review and prescribe operating rules of the plan. *Prior to*
 25 *December 31, 2024, such board shall consist of five members to be*
 26 *appointed as follows:*

27 (A) One representing domestic or foreign insurance companies;;

28 (B) one representing independent insurance agents;;

29 (C) one representing underground storage tank owners and operators; ;
 30 and

31 (D) two representing the general public. No member representing the
 32 general public shall be, or be affiliated with, an insurance company,
 33 independent insurance agent or underground storage tank operator.

34 (2) ~~Members shall be appointed for terms of three years, except that~~
 35 ~~the initial appointment shall include two members appointed for two-year~~
 36 ~~terms and one member appointed for a one-year term, as designated by the~~
 37 ~~commissioner.~~ *The terms of the members of the governing board serving as*
 38 *of July 1, 2024, shall expire on December 31, 2024.*

39 (3) *The commissioner shall appoint a governing board for the plan,*
 40 *to serve on and after January 1, 2025. Members shall be appointed for*
 41 *terms of three years except that such members shall be removable by the*
 42 *commissioner for inefficiency, neglect of duty or malfeasance. The*
 43 *governing board shall meet at least annually to review and prescribe*

1 *operating rules of the plan. Such board shall consist of three members to*
2 *be appointed as follows:*

3 (A) *One member representing domestic or foreign insurance*
4 *companies;*

5 (B) *one representing independent insurance agents; and*

6 (C) *one representing underground storage tank owners and*
7 *operators.*

8 (d) Before adoption of a plan pursuant to this section, the
9 commissioner of insurance shall hold a hearing thereon.

10 (e) An insurer participating in the plan adopted by the commissioner
11 of insurance pursuant to this section may pay a commission with respect to
12 insurance assigned under the plan to an agent licensed for any other
13 insurer participating in the plan or to any insurer participating in the plan.

14 (f) The commissioner of insurance may adopt such rules and
15 regulations as necessary to administer the provisions of this section.

16 (g) The department of health and environment and the plan shall
17 provide to each other such information as necessary to implement and
18 administer the provisions of this section. Any such information ~~which~~ *that*
19 is confidential while in the possession of the department or plan shall
20 remain confidential after being provided to the other pursuant to this
21 subsection.

22 (h) This section shall be a part of and supplemental to the Kansas
23 storage tank act.

24 Sec. 6. K.S.A. 75-4101 is hereby amended to read as follows: 75-
25 4101. (a) There is hereby created a committee on surety bonds and
26 insurance, which shall consist of the state treasurer, the attorney general
27 and the commissioner of insurance or their respective designees. The
28 commissioner of insurance shall be the chairperson of the committee and
29 the director of purchases or the director's designee shall be the ex officio
30 secretary. The committee shall meet upon the call of the chairperson and at
31 such other times as the committee shall determine ~~but at least once each~~
32 ~~month on the second Monday in each month. Meetings shall be held in the~~
33 ~~office of the commissioner of insurance.~~ The members of the committee
34 shall serve without compensation. The secretary shall be the custodian of
35 all property, records and proceedings of the committee. Except as provided
36 in this section and K.S.A. 74-4925, 74-4927, 75-6501 through 75-6511
37 and 76-749, and amendments thereto, no state agency shall purchase any
38 insurance of any kind or nature or any surety bonds upon state officers or
39 employees, except as provided in this act. Except as otherwise provided in
40 this section, ~~health care healthcare~~ coverage and ~~health care healthcare~~
41 services of a health maintenance organization for state officers and
42 employees designated under K.S.A. 75-6501(c), and amendments thereto,
43 shall be provided in accordance with the provisions of K.S.A. 75-6501

1 through 75-6511, and amendments thereto.

2 (b) The Kansas turnpike authority may purchase group life, health
3 and accident insurance or health care services of a health maintenance
4 organization for its employees or members of the highway patrol assigned,
5 by contract or agreement entered pursuant to K.S.A. 68-2025, and
6 amendments thereto, to police toll or turnpike facilities, independent of the
7 committee on surety bonds and insurance and of the provisions of K.S.A.
8 75-6501 through 75-6511, and amendments thereto. Such authority may
9 purchase liability insurance covering all or any part of its operations and
10 may purchase liability and related insurance upon all vehicles owned or
11 operated by the authority independent of the committee on surety bonds
12 and insurance and such insurance may be purchased without complying
13 with K.S.A. 75-3738 through 75-3744, and amendments thereto. Any
14 board of county commissioners may purchase such insurance or health
15 care services, independent of such committee, for district court officers
16 and employees any part of whose total salary is payable by the county.
17 Nothing in any other provision of the laws of this state shall be construed
18 as prohibiting members of the highway patrol so assigned to police toll or
19 turnpike facilities from receiving compensation in the form of insurance or
20 health maintenance organization coverage as herein authorized.

21 (c) The agencies of the state sponsoring a foster grandparent or senior
22 companion program, or both, shall procure a policy of accident, personal
23 liability and excess automobile liability insurance insuring volunteers
24 participating in such programs against loss in accordance with
25 specifications of federal grant guidelines. Such agencies may purchase
26 such policy of insurance independent of the committee on surety bonds
27 and insurance and without complying with K.S.A. 75-3738 through 75-
28 3744, and amendments thereto.

29 (d) Any state educational institution as defined by K.S.A. 76-711, and
30 amendments thereto, may purchase insurance of any kind or nature except
31 employee health insurance. Such insurance shall be purchased on a
32 competitively bid or competitively negotiated basis in accordance with
33 procedures prescribed by the state board of regents. Such insurance may
34 be purchased independent of the committee on surety bonds and insurance
35 and without complying with K.S.A. 75-3738 through 75-3744, and
36 amendments thereto.

37 (e) (1) The state board of regents may enter into one or more group
38 insurance contracts to provide health and accident insurance coverage or
39 health care services of a health maintenance organization for all students
40 attending a state educational institution as defined in K.S.A. 76-711, and
41 amendments thereto, and such students' dependents, except that such
42 insurance shall not provide coverage for elective procedures that are not
43 medically necessary as determined by a treating physician. The

1 participation by a student in such coverage shall be voluntary. In the case
2 of students who are employed by a state educational institution in a student
3 position, the level of employer contributions toward such coverage shall be
4 determined by the board of regents.

5 (2) The state board of regents is hereby authorized to independently
6 provide, through self-insurance or the purchase of insurance contracts,
7 health care benefits for employees of a state educational institution, as
8 such term is defined in K.S.A. 76-711, and amendments thereto, when the
9 state health care benefits program is insufficient to satisfy the requirements
10 of 22 C.F.R. § 62.14, as in effect upon ~~the effective date of this section~~
11 *April 13, 2017*. Such healthcare benefits shall be limited to only those for
12 whom the state health care benefits program does not meet federal
13 requirements.

14 (3) The state board of regents may purchase cybersecurity insurance
15 as it deems necessary to protect student records, labor information and
16 other statutorily protected data that the board maintains, independent of the
17 committee on surety bonds and insurance and without complying with the
18 provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.
19 As used in this paragraph, "cybersecurity insurance" includes, but is not
20 limited to, first-party coverage against losses such as data destruction,
21 denial of service attacks, theft, hacking and liability coverage guaranteeing
22 compensation for damages from errors such as the failure to safeguard
23 data.

24 (4) The state board of regents may adopt rules and regulations
25 necessary to administer and implement the provisions of this section.

26 Sec. 7. K.S.A. 40-2102, 40-2109, 40-3116, 40-3413, 65-34,126 and
27 75-4101 are hereby repealed.

28 Sec. 8. This act shall take effect and be in force from and after its
29 publication in the statute book.