

{As Amended by House Committee of the Whole}

Session of 2014

Substitute for HOUSE BILL No. 2615

By Committee on Commerce, Labor and Economic Development

3-24

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 **See: {Section}** 1. K.S.A. 2013 Supp. 40-2109 is hereby amended to
7 read as follows: 40-2109. (a) Every insurer undertaking to transact in this
8 state 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) (1) Reasonable rules governing the equitable distribution of risks
16 by direct insurance, reinsurance or otherwise and their assignment to
17 insurers;

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

20 (c) (3) 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; *and*

23 (d) (4) 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.*

28 (A) *The governing board shall consist of the following members:*

29 ~~(1) seven~~ *11* members who shall be appointed as follows: ~~Three of~~
30 ~~such members shall be representatives of foreign insurance companies,~~
31 ~~two members shall be representatives of domestic insurance companies~~
32 ~~and two members shall be licensed independent insurance agents. Such~~
33 ~~members shall be appointed for a term of three years, except that the initial~~
34 ~~appointment shall include two members appointed for a two-year term and~~
35 ~~two members appointed for a one-year term, as designated by the~~
36 ~~commissioner; and~~

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

3 (i) *Three members appointed from representatives of admitted*
4 *insurance companies engaged in the workers compensation market in*
5 *Kansas to be appointed by the commissioner of insurance. Each such*
6 *representative shall be appointed for an initial term of three years;*

7 (ii) *three members appointed from representatives of admitted*
8 *insurance companies engaged in the workers compensation market in*
9 *Kansas to be appointed by the commissioner of insurance. Each such*
10 *representative shall be appointed for an initial term of two years;*

11 (iii) *two members appointed by the Kansas association of insurance*
12 *agents. One such member shall be appointed for an initial term of three*
13 *years. One such member shall be appointed for an initial term of two*
14 *years;*

15 (iv) *one member appointed by the national federation of independent*
16 *businesses- Kansas chapter. Such member shall be appointed for an initial*
17 *term of two years;*

18 (v) *one member appointed by the Kansas chamber of commerce. Such*
19 *member shall be appointed for an initial term of three years; and*

20 (vi) *one member at-large appointed by the commissioner of*
21 *insurance. Such member shall be appointed for an initial term of three*
22 *years.*

23 (B) *The terms of all board members existing on the day preceding the*
24 *effective date of this act shall terminate on the effective date of this act.*
25 *This subparagraph shall not prohibit any such board member from being*
26 *appointed to the new governing board.*

27 (C) *After the expiration of each member's initial term, the subsequent*
28 *term for such member's position shall be ~~equal to the initial term for such~~*
29 *~~position~~ {three years}. No appointee shall serve more than two*
30 *consecutive terms; and*

31 (5) *for the performance of an independent financial audit. Such audit*
32 *shall be performed biennially on the financial results of the plan. Such*
33 *audit shall include, but not be limited to:*

34 (A) *Premiums written and earned;*

35 (B) *losses paid;*

36 (C) *incurred losses;*

37 (D) *taxes; and*

38 (E) *administration and servicing carrier allowances.*

39 (b) *The commissioner shall review the plan as soon as reasonably*
40 *possible after filing in order to determine whether it meets the*
41 *requirements set forth in ~~subsections (a) and (c) above~~ subsection (a).* *As*
42 *soon as reasonably possible after the plan has been filed the commissioner*
43 *shall in writing approve or disapprove the same, except that any plan shall*

1 be deemed approved unless disapproved within 45 days. Subsequent to the
2 waiting period the commissioner may disapprove any plan on the ground
3 that it does not meet the requirements set forth in ~~subsections (a), (b) and~~
4 ~~(c) above~~ subsection (a), but only after a hearing held upon not less than
5 10 days' written notice to every insurer and rating organization affected
6 specifying the matter to be considered at such hearing, and only by an
7 order specifying in what respect the commissioner finds that such plan
8 fails to meet such requirements and stating when within a reasonable
9 period thereafter such plan shall be deemed no longer effective. Such order
10 shall not affect any assignment made or policy issued or made prior to the
11 expiration of the period set forth in such order. Amendments to such plan
12 or plans shall be prepared, and filed and reviewed in the same manner as
13 herein provided with respect to the original plan or plans.

14 (c) If no plan meeting the standards set forth in ~~subsections (a), (b)~~
15 ~~and (c)~~ subsection (a) is submitted to the commissioner within the period
16 stated in any order, disapproving an existing plan the commissioner shall,
17 if necessary to carry out the purpose of this section after hearing, prepare
18 and promulgate a plan meeting such requirements. When such plan or
19 plans or amendments thereto have been approved or promulgated, no
20 insurer shall thereafter issue a policy of workers compensation or
21 employer's liability insurance or undertake to transact such business in this
22 state unless such insurer shall participate in such an approved or
23 promulgated plan. If, after a hearing conducted in accordance with the
24 provisions of the Kansas administrative procedure act, the commissioner
25 finds that any activity or practice of any insurer or rating organization in
26 connection with the operation of such plan or plans is unfair or
27 unreasonable or otherwise inconsistent with the provisions of this section
28 the commissioner may issue a written order specifying in what respects
29 such activity or practice is unfair or unreasonable or otherwise inconsistent
30 with the provisions of this section and requiring discontinuance of such
31 activity or practice.

32 ~~(c)~~ (d) The commissioner shall approve rates and rate modifications
33 for each plan that provides workers compensation insurance. This
34 provision shall not prohibit the application of surcharges, experience
35 modifications or other rating variables.

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

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