

(Corrected)

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*[As Amended by Senate Committee of the Whole]*

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*As Amended by Senate Committee*

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**[As Amended by House Committee of the Whole]**

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**As Amended by House Committee**

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*Session of 2011*

## HOUSE BILL No. 2139

By Committee on Insurance

2-3

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1 AN ACT concerning insurance; relating to rates and rate modifications for  
2 workers compensation insurance; **[authorizing the state fair board to**  
3 **purchase workers compensation insurance;]** amending K.S.A. **40-**  
4 **954 and 40-2109 and K.S.A. 2010 Supp. 40-955** and repealing the  
5 existing ~~section~~ **sections**.  
6

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

8 **[New Section 1. (a) Notwithstanding the provisions of K.S.A. 44-**  
9 **576, and amendments thereto, the state fair board is hereby**  
10 **authorized to purchase workers compensation insurance from an**  
11 **admitted carrier. Any contract for the purchase of workers**  
12 **compensation insurance entered into by the state fair board shall be**  
13 **purchased in the manner prescribed for the purchase of supplies,**  
14 **materials, equipment and contractual services as provided in K.S.A.**  
15 **75-3738 through 75-3744, and amendments thereto, and any such**  
16 **contract having a premium or rate in excess of \$500 shall be**  
17 **purchased on the basis of sealed bids. Such contract shall not be**  
18 **subject to the provisions of K.S.A. 75-4101 through 75-4114 and**  
19 **K.S.A. 2010 Supp. 75-4125, and amendments thereto.]**

20 **[(b) If the state fair board enters into a contract for the purchase**  
21 **of workers compensation insurance as described in subsection (a),**  
22 **from and after the end of the payroll period in which such workers**  
23 **compensation policy takes effect, the state fair board shall not be**  
24 **subject to the self-insurance assessment prescribed by K.S.A. 44-576,**  
25 **and amendments thereto, and the director of accounts and reports**  
26 **shall cease to transfer any amounts for such self-assessment for the**  
27 **state fair board pursuant to such statute], except that any moneys paid**

1 *relating to existing claims with the state workers compensation self-*  
2 *insurance fund made by the state fair board shall be assessed to the state*  
3 *fair board until all such claims have been closed and settled].]*

4 [(c) Notwithstanding the provisions of K.S.A. 44-575, and  
5 amendments thereto, if the state fair board enters into a contract for  
6 the purchase of workers compensation insurance as described in  
7 subsection (a), the state workers compensation self-insurance fund  
8 shall not be liable for any compensation claims under the workers  
9 compensation act relating to the state fair board and arising during  
10 the term of such] [contract, or for any other amounts otherwise  
11 required to be paid under the workers compensation act during the  
12 term of such contract.]

13 [(d) The state fair board shall notify the secretary of  
14 administration and the Kansas health policy authority of the effective  
15 date of any workers compensation policy acquired pursuant to this  
16 section.]

17 [~~Section 1.~~ *Sec. 2.* K.S.A. 2010 Supp. 40-955 is hereby amended to  
18 read as follows: 40-955. (a) Every insurer shall file with the  
19 commissioner, except as to inland marine risks where general custom  
20 of the industry is not to use manual rates or rating plans, every  
21 manual of classifications, rules and rates, every rating plan, policy  
22 form and every modification of any of the foregoing which it proposes  
23 to use. Every such filing shall indicate the proposed effective date and  
24 the character and extent of the coverage contemplated and shall be  
25 accompanied by the information upon which the insurer supports the  
26 filings. A filing and any supporting information shall be open to public  
27 inspection after it is filed with the commissioner. An insurer may  
28 satisfy its obligations to make such filings by authorizing the  
29 commissioner to accept on its behalf the filings made by a licensed  
30 rating organization or another insurer. Nothing contained in this act  
31 shall be construed to require any insurer to become a member or  
32 subscriber of any rating organization.

33 (b) Certificate of insurance forms must be filed with the  
34 commissioner of insurance and approved prior to use. Notwithstanding the "large risk" filing exemption in subsection (j), a  
35 certificate of insurance cannot be used to modify, alter or amend the  
36 insurance policy it describes. The certificate of insurance shall contain  
37 the following or similar language: The certificate of insurance neither  
38 affirmatively nor negatively amends, extends or alters the coverage  
39 afforded by the policies listed thereon. An industry standard setting  
40 organization may be authorized by the commissioner of insurance to  
41 file certificate of insurance forms on behalf of authorized insurers.

42 (c) Any rate filing for the basic coverage required by K.S.A. 40-  
43

1 3401 et seq., and amendments thereto, loss costs filings for workers  
 2 compensation, and rates for assigned risk plans established by article  
 3 21 of chapter 40 of the Kansas Statutes Annotated, *and amendments*  
 4 *thereto*, or rules and regulations established by the commissioner shall  
 5 require approval by the commissioner before its use by the insurer in  
 6 this state. As soon as reasonably possible after such filing has been  
 7 made, the commissioner shall in writing approve or disapprove the  
 8 same, except that any filing shall be deemed approved unless  
 9 disapproved within 30 days of receipt of the filing.

10 (d) Any other rate filing, except personal lines filings, shall  
 11 become effective on filing or any prospective date selected by the  
 12 insurer, subject to the commissioner disapproving the same if the rates  
 13 are determined to be inadequate, excessive, unfairly discriminatory or  
 14 otherwise fails to meet the requirements of this act. ~~Subject to the~~  
 15 ~~provisions of K.S.A. 40-954, and amendments thereto, an insurer may file~~  
 16 ~~up to four workers compensation loss cost multipliers and up to four~~  
 17 ~~policy holder dividend plans within a single insurer. Eligibility for~~  
 18 ~~individual loss cost multipliers and dividend plans shall be based on~~  
 19 ~~insurer underwriting criteria and judgment.~~ Personal lines rate filings  
 20 shall be on file for a waiting period of 30 days before becoming  
 21 effective, subject to the commissioner disapproving the same if the  
 22 rates are determined to be inadequate, excessive, unfairly  
 23 discriminatory or otherwise fail to meet requirements of this act. The  
 24 term "personal lines" shall mean insurance for noncommercial  
 25 automobile, homeowners, dwelling fire-and-renters insurance policies,  
 26 as defined by the commissioner by rules and regulations. A filing  
 27 complies with this act unless it is disapproved by the commissioner  
 28 within the waiting period or pursuant to subsection (f).

29 (e) In reviewing any rate filing the commissioner may require the  
 30 insurer or rating organization to provide, at the insurer's or rating  
 31 organization's expense, all information necessary to evaluate the  
 32 reasonableness of the filing, to include payment of the cost of an  
 33 actuary selected by the commissioner to review any rate filing, if the  
 34 department of insurance does not have a staff actuary in its employ.

35 (f) (1) (A) If a filing is not accompanied by the information  
 36 required by this act, the commissioner shall promptly inform the  
 37 company or organization making the filing. The filing shall be deemed  
 38 to be complete when the required information is received by the  
 39 commissioner or the company or organization certifies to the  
 40 commissioner the information requested is not maintained by the  
 41 company or organization and cannot be obtained.

42 (B) If the commissioner finds a filing does not meet the  
 43 requirements of this act, the commissioner shall send to the insurer or

1 rating organization that made the filing, written notice of disapproval  
2 of the filing, specifying in what respects the filing fails to comply and  
3 stating the filing shall not become effective.

4 (C) If at any time after a filing becomes effective, the  
5 commissioner finds a filing does not comply with this act, the  
6 commissioner shall after a hearing held on not less than 10 days'  
7 written notice to every insurer and rating organization that made the  
8 filing issue an order specifying in what respects the filing failed to  
9 comply with the act, and stating when, within a reasonable period  
10 thereafter, the filing shall be no longer effective. Copies of the order  
11 shall be sent to such insurer or rating organization. The order shall  
12 not affect any contract or policy made or issued prior to the expiration  
13 of the period set forth in the order.

14 (2) (A) In the event an insurer or organization has no legally  
15 effective rate because of an order disapproving rates, the  
16 commissioner shall specify an interim rate at the time the order is  
17 issued. The interim rate may be modified by the commissioner on the  
18 commissioner's own motion or upon motion of an insurer or  
19 organization.

20 (B) The interim rate or any modification thereof shall take effect  
21 prospectively in contracts of insurance written or renewed 15 days  
22 after the commissioner's decision setting interim rates.

23 (C) When the rates are finally determined, the commissioner  
24 shall order any overcharge in the interim rates to be distributed  
25 appropriately, except refunds to policyholders the commissioner  
26 determines are de minimis may not be required.

27 (3) (A) Any person or organization aggrieved with respect to any  
28 filing that is in effect may make written application to the  
29 commissioner for a hearing thereon, except that the insurer or rating  
30 organization that made the filing may not proceed under this  
31 subsection. The application shall specify the grounds to be relied on by  
32 the applicant.

33 (B) If the commissioner finds the application is made in good  
34 faith, that the applicant would be so aggrieved if the applicant's  
35 grounds are established, and that such grounds otherwise justify  
36 holding such a hearing, the commissioner shall, within 30 days after  
37 receipt of the application, hold a hearing on not less than 10 days'  
38 written notice to the applicant and every insurer and rating  
39 organization that made such filing.

40 (C) Every rating organization receiving a notice of hearing or  
41 copy of an order under this section, shall promptly notify all its  
42 members or subscribers affected by the hearing or order. Notice to a  
43 rating organization of a hearing or order shall be deemed notice to its

1 members or subscribers.

2 (g) No insurer shall make or issue a contract or policy except in  
3 accordance with filings which have been filed or approved for such  
4 insurer as provided in this act.

5 (1) On an application for personal motor vehicle insurance where  
6 the applicant has applied for collision or comprehensive coverage, the  
7 applicant shall be allowed to identify a lienholder listed on the  
8 certificate of title for the motor vehicle described in the application.

9 (2) On an application for property insurance on real property, the  
10 applicant shall be allowed to identify a mortgagee listed on a mortgage  
11 for the real property described in the application.

12 (h) The commissioner may adopt rules and regulations to allow  
13 suspension or modification of the requirement of filing and approval  
14 of rates as to any kind of insurance, subdivision or combination  
15 thereof, or as to classes of risks, the rates for which cannot practicably  
16 be filed before they are used.

17 (i) Except for workers compensation and employer's liability line,  
18 the following categories of commercial lines risks are considered  
19 special risks which are exempt from the filing requirements in this  
20 section: (1) Risks that are written on an excess or umbrella basis; (2)  
21 commercial risks, or portions thereof, that are not rated according to  
22 manuals, rating plans, or schedules including "a" rates; (3) large  
23 risks; and (4) special risks designated by the commissioner, including  
24 but not limited to risks insured under highly protected risks rating  
25 plans, commercial aviation, credit insurance, boiler and machinery,  
26 inland marine, fidelity, surety and guarantee bond insurance risks.

27 (j) For the purposes of this subsection, "large risk" means: (1) An  
28 insured that has total insured property values of \$5,000,000 or more;  
29 (2) an insured that has total annual gross revenues of \$10,000,000 or  
30 more; or (3) an insured that has in the preceding calendar year a total  
31 paid premium of \$50,000 or more for property insurance, \$50,000 or  
32 more for general liability insurance, or \$100,000 or more for multiple  
33 lines policies.

34 (k) The exemption for any large risk contained in subsection (h)  
35 shall not apply to workers compensation and employer's liability  
36 insurance, insurance purchasing groups, and the basic coverage  
37 required by K.S.A. 40-3401 et seq., and amendments thereto.

38 (l) Underwriting files, premium, loss and expense statistics,  
39 financial and other records pertaining to special risks written by any  
40 insurer shall be maintained by the insurer and shall be subject to  
41 examination by the commissioner.]

42 (m) (1) *Any entity that purchases a workers compensation policy for*  
43 *the covered employees of more than one employer pursuant to a shared*

1 *employment relationship with each employer must purchase the workers*  
2 *compensation policy on a separate multiple coordinate policy basis.*  
3 *Such workers compensation policies must be issued pursuant to K.S.A.*  
4 *44-501 et seq., and amendments thereto, from an insurer holding a*  
5 *certificate of authority to do business in this state and providing workers*  
6 *compensation coverage.*

7 *(2) The commissioner of insurance shall be authorized to adopt*  
8 *such rules and regulation as are reasonable and necessary to carry out*  
9 *the purpose and the provisions of this subsection.*

10 ~~Section 1. Sec. 2.~~ [3.] K.S.A. 40-2109 is hereby amended to read as  
11 follows: 40-2109. Every insurer undertaking to transact in this state the  
12 business of either workers compensation or employer's liability insurance  
13 or both, and every rating organization which files rates for such insurance  
14 shall cooperate in the preparation and submission to the commissioner of  
15 insurance of a plan or plans, for the equitable apportionment among  
16 insurers of applicants for insurance who are in good faith, entitled to but  
17 who are unable to procure through ordinary methods, such insurance. Such  
18 plan or plans shall provide:

19 (a) Reasonable rules governing the equitable distribution of risks by  
20 direct insurance, reinsurance or otherwise and their assignment to insurers;

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

23 (c) a method whereby applicants for insurance, insured and insurers  
24 may have a hearing on grievances and the right of appeal to the  
25 commissioner;

26 (d) for every such plan or plans, there shall be a governing board to  
27 be appointed by the commissioner of insurance which shall meet at least  
28 annually to review and prescribe operating rules, and which shall consist  
29 of the following members:

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

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

40 The commissioner shall review the plan as soon as reasonably possible  
41 after filing in order to determine whether it meets the requirements set  
42 forth in subsections (a) and (c) above. As soon as reasonably possible after  
43 the plan has been filed the commissioner shall in writing approve or

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

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

32 (e) The commissioner shall approve rates and rate modifications for  
 33 each plan that provides workers compensation insurance pursuant to this  
 34 section which, over a period of time, but no later than January 1, 1997,  
 35 will reduce the assessments levied by the plan to less than 10%. If the  
 36 commissioner finds that the percentage of the total Kansas workers  
 37 compensation premium volume written by the plan has not decreased  
 38 below 20% of the total amount of such premium volume by December 31,  
 39 1998, the provisions of this subsection shall no longer apply and the  
 40 commissioner may cause the governing board of the plan to file new rates  
 41 and rate modifications pursuant to this section. Notwithstanding the  
 42 foregoing provisions of this subsection, the commissioner shall not  
 43 approve rates or rating plans which produce rates or premiums for risks

1 with less than \$2,250 annual premium that are higher than those which  
2 would be applied to such risks in the voluntary market, except that this.  
3 This provision shall not prohibit the application of surcharges, experience  
4 modifications or other rating variables based on the claims experience of  
5 individual risks.

6 **Sec. 4. K.S.A. 40-954 is hereby amended to read as follows: 40-954.**  
7 ***In determining whether rates are not excessive or inadequate or not***  
8 ***unfairly discriminatory:***

9 (a) *Due consideration shall be given to:*

10 (1) *Past and prospective loss and expense experience within and*  
11 *outside the state;*

12 (2) *catastrophe hazards and contingencies;*

13 (3) *trends within and outside this state;*

14 (4) *loadings for leveling premium rates over time;*

15 (5) *dividends, savings or unabsorbed premium deposits allowed or*  
16 *returned by insurers to their policyholders, members, or subscribers and*  
17 *the investment income of the insurer; and*

18 (6) *all other relevant factors within and outside the state, including*  
19 *the judgment of technical personnel.*

20 (b) *The expense provisions included in the rates to be used by an*  
21 *insurer may reflect the operating methods of the insurer, or group of*  
22 *insurers, and, so far as it is credible, its own expense experience.*

23 (c) *Risks may be classified in any reasonable way for the*  
24 *establishment of rates and minimum premiums, except that no*  
25 *classification may be based on race, color, creed or national origin and*  
26 *classifications in automobile insurance may not be based on physical*  
27 *disability of an insured. Rates thus produced may be modified for*  
28 *individual risks in accordance with rating plans, schedules, except for*  
29 *workers compensation, individual risk premium modification plans and*  
30 *expense reduction plans that establish reasonable standards for*  
31 *measuring probable variations in experience, hazards, expenses or any*  
32 *combination of those factors.*

33 *Such standards shall permit recognition of expected differences in*  
34 *loss or expense characteristics, and shall be designed so that such plans*  
35 *are reasonable and equitable in their application, and are not unfairly*  
36 *discriminatory, violative of public policy or otherwise contrary to the best*  
37 *interests of the people of this state. This section shall not prevent the*  
38 *development of new or innovative rating methods which otherwise*  
39 *comply with this act.*

40 (d) *Rates may be modified for individual risks, upon written*  
41 *application of the insured, stating the insured's reasons therefore, filed*  
42 *with and not disapproved by the commissioner within 10 days after*  
43 *filings.*

1       (e) *The rates may contain provisions for contingencies and an*  
2 *allowance permitting a reasonable profit. In determining the*  
3 *reasonableness of the profit, consideration shall be given to the*  
4 *investment income attributable to the line of insurance.*

5       (f) *The commissioner may by rule exempt any person or class of*  
6 *persons, line of insurance, or any market segment from any or all of the*  
7 *provisions of this chapter, if and to the extent that the commissioner*  
8 *finds their application unnecessary to achieve the purposes of this act.*

9       (g) *Once it has been filed, use of any rating plan shall be*  
10 *mandatory and such plan shall be applied uniformly for eligible risks in*  
11 *a manner that is not unfairly discriminatory.*

12       Sec. ~~2. 3. [4.]~~ 5. K.S.A. 40-954 and 40-2109 is and K.S.A. 2010  
13 **Supp. 40-955** are hereby repealed.

14       Sec. ~~3. 4. [5.]~~ 6. This act shall take effect and be in force from and  
15 after its publication in the statute book.