

40-2109. Apportionment or assignment of risk of certain workers compensation and employer's liability insurance; filing of plan; requirements; governing board of plan; membership, meetings, term of office and duties; review of plan; approval; disapproval; procedure; amendment; preparation of plan by commissioner; unreasonable or unfair activities by insurer or rating organization.

Every insurer undertaking to transact in this state the business of either workers compensation or employer's liability insurance or both, and every rating organization which files rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans, for the equitable apportionment among insurers of applicants for insurance who are in good faith, entitled to but who are unable to procure through ordinary methods, such insurance. Such plan or plans shall provide:

- (a) Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise and their assignment to insurers;
- (b) rates and rate modifications applicable to such risks which shall be reasonable, adequate and not unfairly discriminatory;
- (c) a method whereby applicants for insurance, insured and insurers may have a hearing on grievances and the right of appeal to the commissioner;
- (d) for every such plan or plans, there shall be a governing board to be appointed by the commissioner of insurance which shall meet at least annually to review and prescribe operating rules, and which shall consist of the following members:
 - (1) Seven members who shall be appointed as follows: Three of such members shall be representatives of foreign insurance companies, two members shall be representatives of domestic insurance companies and two members shall be licensed independent insurance agents. Such members shall be appointed for a term of three years, except that the initial appointment shall include two members appointed for a two-year term and two members appointed for a one-year term, as designated by the commissioner; and
 - (2) Two members representative of the general public interest with such members to be appointed for a term of two years.

The commissioner shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsections (a) and (c) above. As soon as reasonably possible after the plan has been filed the commissioner shall in writing approve or disapprove the same, except that any plan shall be deemed approved unless disapproved within 45 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsections (a), (b) and (c) above, but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying the matter to be considered at such hearing, and only by an order specifying in what respect the commissioner finds that such plan fails to meet such requirements and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in such order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

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

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

History: L. 1961, ch. 239, § 2; L. 1969, ch. 238, § 8; L. 1988, ch. 356, § 105; L. 1993, ch. 286, § 23; L. 2011, ch. 113, § 3; July 1.