

Senate Substitute for HOUSE BILL No. 2366

By Committee on Financial Institutions and Insurance

3-22

10 AN ACT concerning insurance; pertaining to certain requirements re-
11 garding casualty insurance companies filing rates, forms and premi-
12 ums; pertaining to certain penalties under the Kansas automobile in-
13 jury reparations act; pertaining to certain appeal rights regarding
14 adverse health care decisions under health insurance policies; amend-
15 ing K.S.A. ~~40-954~~, 40-955 and 40-3104 and K.S.A. 2005 Supp. 40-216
16 and repealing the existing sections.
17

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

19 Section 1. K.S.A. 2005 Supp. 40-216 is hereby amended to read as
20 follows: 40-216. (a) (1) No insurance company shall hereafter transact
21 business in this state until certified copies of its charter and amendments
22 thereto shall have been filed with and approved by the commissioner of
23 insurance. A copy of the bylaws and amendments thereto of insurance
24 companies organized under the laws of this state shall also be filed with
25 and approved by the commissioner of insurance. The commissioner may
26 also require the filing of such other documents and papers as are nec-
27 essary to determine compliance with the laws of this state. ~~No contract~~
28 ~~of insurance or indemnity shall be issued or delivered in this state until~~
29 ~~the form of the same has been filed with the commissioner of insurance,~~
30 ~~nor if the commissioner of insurance gives written notice within 30 days~~
31 ~~of such filing, to the company proposing to issue such contract, showing~~
32 ~~wherein the form of such contract does not comply with the requirements~~
33 ~~of the laws of this state, but the failure of any insurance company to~~
34 ~~comply with this section shall not constitute a defense to any action~~
35 ~~brought on its contracts. An insurer may satisfy its obligation to file its~~
36 ~~contracts of insurance or indemnity either individually or by authorizing~~
37 ~~the commissioner to accept on its behalf the filings made by a licensed~~
38 ~~rating organization or another insurer.~~

39 (2) (A) *Except as provided in subparagraph (B), each contract of in-*
40 *sureance or indemnity issued or delivered in this state shall be effective on*
41 *filing, or any subsequent date selected by the insurer, unless the commis-*
42 *sioner disapproves such contract of insurance within 30 days after filing*
43 *because the rates are determined to be inadequate, excessive, unfairly*

- 1 *discriminatory or otherwise fail to meet the requirements of this act.*
2 (B) *The following contracts of insurance or indemnity shall not be*
3 *subject to the provisions of subsection (A):*
4 (i) *Contracts pertaining to large risks as defined in K.S.A. 40-955(i),*
5 *and amendments thereto, which are exempt from the filing requirements*
6 *of this section;*
7 (ii) *personal lines contracts filed in accordance with paragraph (3) of*
8 *this section;*
9 (iii) *any form filing for the basic coverage required by K.S.A. 40-3401*
10 *et seq., and amendments thereto; and*
11 (iv) *form filing for workers compensation.*
12 *No form filing listed in clauses (iii) and (iv) of this subparagraph shall*
13 *be used in this state by any insurer until such form filing has been ap-*
14 *proved by the commissioner.*
15 (3) *Each personal lines contract of insurance or indemnity issued or*
16 *delivered in this state shall be on file for a period of 30 days before be-*
17 *coming effective unless the commissioner disapproves such personal lines*
18 *contract if the rates are determined by the commissioner to be inadequate,*
19 *excessive, unfairly discriminatory or otherwise fail to meet the require-*
20 *ments of this act. For the purposes of this paragraph, the term “personal*
21 *lines” shall mean insurance for noncommercial automobile, homeowners,*
22 *dwelling, fire and renters insurance policies as defined by the commis-*
23 *sioner by rules and regulations.*
24 (4) *Under such rules and regulations as the commissioner of insur-*
25 *ance shall adopt, the commissioner may, by written order, suspend or*
26 *modify the requirement of filing forms of contracts of insurance or in-*
27 *demnity, which cannot practicably be filed before they are used. Such*
28 *orders, rules and regulations shall be made known to insurers and rating*
29 *organizations affected thereby. The commissioner may make an exami-*
30 *nation to ascertain whether any forms affected by such order meet the*
31 *standards of this code.*
32 (5) *The failure of any insurance company to comply with this section*
33 *shall not constitute a defense to any action brought on its contracts. An*
34 *insurer may satisfy its obligation to file its contracts of insurance or in-*
35 *demnity either individually or by authorizing the commissioner to accept*
36 *on its behalf the filings made by a licensed rating organization or another*
37 *insurer.*
38 (b) *The commissioner of insurance shall allow any insurance company*
39 *authorized to transact business in this state to deliver to any person in*
40 *this state any contract of insurance or indemnity, including any explana-*
41 *tory materials, written in any language other than the English language*
42 *under the following conditions:*
43 (1) *The insured or applicant for insurance who is given a copy of the*

1 same contract of insurance or indemnity or explanatory materials written
2 in the English language;

3 (2) the English language version of the contract for insurance or in-
4 demnity or explanatory materials delivered shall be the controlling ver-
5 sion; and

6 (3) any contract of insurance or indemnity or explanatory materials
7 written in any language other than English shall contain a disclosure state-
8 ment in 10 point boldface type, printed in both the English language and
9 the other language used, stating the English version of the contract of
10 insurance or indemnity is the official or controlling version and that the
11 version is written in any language other than English is furnished for
12 informational purposes only.

13 (c) All contracts of insurance or indemnity that are required to be
14 filed with the commissioner of insurance shall be accompanied by any
15 version of such contract of insurance or indemnity written in any language
16 other than the English language.

17 (d) Any insurance company or insurer, including any agent or em-
18 ployee thereof, who knowingly misrepresents the content of a contract of
19 insurance or indemnity or explanatory materials written in a language
20 other than the English language shall be deemed to have violated the
21 unfair trade practice law.

22 (e) For the purposes of this section, the term “contract of insurance
23 or indemnity” shall include any rider, endorsement or application per-
24 taining to such contract of insurance or indemnity.

25 (f) (1) *If at any time after a filing becomes effective, the commissioner*
26 *finds that such filing does not comply with this act, after the commissioner*
27 *shall send written notice to every insurer and rating organization making*
28 *such filing that a hearing concerning such filing will be held in not less*
29 *than 10 days.*

30 (2) *After the hearing, the commissioner shall issue an order stating:*

31 (A) *The reasons why such filing failed to comply with the act; and*

32 (B) *the date, within a reasonable time after the date the order is is-
33 sued, upon which such filing shall no longer be effective.*

34 (3) *A copy of the commissioner’s order shall be sent to every insurer
35 and rating organization that made such filing.*

36 (4) *No order issued pursuant to this subsection shall affect any con-
37 tract or policy made or issued under such filing prior to the date specified
38 upon which such filing shall no longer be effective.*

39 ~~Sec. 2. K.S.A. 40-954 is hereby amended to read as follows: 40-954.~~
40 ~~In determining whether rates are not excessive or inadequate or not un-~~
41 ~~fairly discriminatory:~~

42 ~~—(a) Due consideration shall be given to:~~

43 ~~—(1) Past and prospective loss and expense experience within and out-~~

1 ~~side the state;~~
2 ~~—(2) catastrophe hazards and contingencies;~~
3 ~~—(3) trends within and outside this state;~~
4 ~~—(4) loadings for leveling premium rates over time;~~
5 ~~—(5) dividends, savings or unabsorbed premium deposits allowed or~~
6 ~~returned by insurers to their policyholders, members, or subscribers and~~
7 ~~the investment income of the insurer; and~~
8 ~~—(6) all other relevant factors within and outside the state, including~~
9 ~~the judgment of technical personnel.~~
10 ~~—(b) The expense provisions included in the rates to be used by an~~
11 ~~insurer may reflect the operating methods of the insurer, or group of~~
12 ~~insurers, and, so far as it is credible, its own expense experience.~~
13 ~~—(c) Risks may be classified in any reasonable way for the establish-~~
14 ~~ment of rates and minimum premiums, except that no classification may~~
15 ~~be based on race, color, creed or national origin and classifications in~~
16 ~~automobile insurance may not be based on physical disability of an in-~~
17 ~~sured. Rates thus produced may be modified for individual risks in ac-~~
18 ~~cordance with rating plans, schedules, except for workers compensation,~~
19 ~~individual risk premium modification plans and expense reduction plans~~
20 ~~that establish reasonable standards for measuring probable variations in~~
21 ~~experience, hazards, expenses or any combination of those factors.~~
22 ~~—Such standards shall permit recognition of expected differences in loss~~
23 ~~or expense characteristics, and shall be designed so that such plans are~~
24 ~~reasonable and equitable in their application, and are not unfairly dis-~~
25 ~~criminatory, violative of public policy or otherwise contrary to the best~~
26 ~~interests of the people of this state. This section shall not prevent the~~
27 ~~development of new or innovative rating methods which otherwise com-~~
28 ~~ply with this act.~~
29 ~~—(d) Rates may be modified for individual risks, upon written appli-~~
30 ~~cation of the insured, stating the insured's reasons therefore, filed with~~
31 ~~and not disapproved by the commissioner within 10 days after filings *in*~~
32 ~~*accordance with section 4 and amendments thereto.*~~
33 ~~—(e) The rates may contain provisions for contingencies and an allow-~~
34 ~~ance permitting a reasonable profit. In determining the reasonableness~~
35 ~~of the profit, consideration shall be given to the investment income at-~~
36 ~~tributable to the line of insurance.~~
37 ~~—(f) The commissioner may by rule exempt any person or class of per-~~
38 ~~sons, line of insurance, or any market segment from any or all of the~~
39 ~~provisions of this chapter, if and to the extent that the commissioner finds~~
40 ~~their application unnecessary to achieve the purposes of this act.~~
41 ~~—(g) Once it has been filed, use of any rating plan shall be mandatory~~
42 ~~and such plan shall be applied uniformly for eligible risks in a manner~~
43 ~~that is not unfairly discriminatory.~~

1 Sec. ~~2~~ [2.] K.S.A. 40-955 is hereby amended to read as follows: 40-
2 955. (a) Every insurer shall file with the commissioner, except as to inland
3 marine risks where general custom of the industry is not to use manual
4 rates or rating plans, every manual of classifications, rules and rates, every
5 rating plan, policy form and every modification of any of the foregoing
6 which it proposes to use. Every such filing shall indicate the proposed
7 effective date and the character and extent of the coverage contemplated
8 and shall be accompanied by the information upon which the insurer
9 supports the filings. A filing and any supporting information shall be open
10 to public inspection after it is filed with the commissioner. An insurer
11 may satisfy its obligations to make such filings by authorizing the com-
12 missioner to accept on its behalf the filings made by a licensed rating
13 organization or another insurer. Nothing contained in this act shall be
14 construed to require any insurer to become a member or subscriber of
15 any rating organization.

16 (b) Any rate filing for the basic coverage required by K.S.A. 40-3401
17 *et seq.* and amendments thereto, loss costs filings for workers compen-
18 sation, and rates for assigned risk plans established by article 21 of chapter
19 40 of the Kansas Statutes Annotated or rules and regulations established
20 by the commissioner shall require approval by the commissioner before
21 its use by the insurer in this state. ~~Policy forms shall require approval by~~
22 ~~the commissioner before use by insurers in this state, consistent with the~~
23 ~~requirements of K.S.A. 40-216 and amendments thereto.~~ As soon as reason-
24 ably possible after such filing has been made, the commissioner shall
25 in writing approve or disapprove the same, except that any filing shall be
26 deemed approved unless disapproved within 30 days of receipt of the
27 filing.

28 (c) Any other rate filing, except personal lines filings, shall become
29 effective on filing or any prospective date selected by the insurer, subject
30 to the commissioner disapproving the same if the rates are determined
31 to be inadequate, excessive, unfairly discriminatory or otherwise fails to
32 meet the requirements of this act. Personal lines rate filings shall be on
33 file for a waiting period of 30 days before becoming effective, subject to
34 the commissioner disapproving the same if the rates are determined to
35 be inadequate, excessive, unfairly discriminatory or otherwise fail to meet
36 requirements of this act. The term “personal lines” shall mean insurance
37 for noncommercial automobile, homeowners, dwelling fire-and-renters
38 insurance policies, as defined by the commissioner by rules and regula-
39 tions. A filing complies with this act unless it is disapproved by the com-
40 missioner within the waiting period or pursuant to subsection (e).

41 (d) In reviewing any rate filing the commissioner may require the
42 insurer or rating organization to provide, at the insurer’s or rating organ-
43 ization’s expense, all information necessary to evaluate the reasonableness

1 of the filing, to include payment of the cost of an actuary selected by the
2 commissioner to review any rate filing, if the department of insurance
3 does not have a staff actuary in its employ.

4 (e) (I) (A) If a filing is not accompanied by the information required
5 by this act, the commissioner shall promptly inform the company or or-
6 ganization making the filing. The filing shall be deemed to be complete
7 when the required information is received by the commissioner or the
8 company or organization certifies to the commissioner the information
9 requested is not maintained by the company or organization and cannot
10 be obtained.

11 (B) If the commissioner finds a filing does not meet the requirements
12 of this act, the commissioner shall send to the insurer or rating organi-
13 zation that made the filing, written notice of disapproval of the filing,
14 specifying in what respects the filing fails to comply and stating the filing
15 shall not become effective.

16 (C) If at any time after a filing becomes effective, the commissioner
17 finds a filing does not comply with this act, the commissioner shall after
18 a hearing held on not less than 10 days' written notice to every insurer
19 and rating organization that made the filing issue an order specifying in
20 what respects the filing failed to comply with the act, and stating when,
21 within a reasonable period thereafter, the filing shall be no longer effec-
22 tive. Copies of the order shall be sent to such insurer or rating organi-
23 zation. The order shall not affect any contract or policy made or issued
24 prior to the expiration of the period set forth in the order.

25 (2) (A) In the event an insurer or organization has no legally effective
26 rate because of an order disapproving rates, the commissioner shall spec-
27 ify an interim rate at the time the order is issued.

28 (B) The interim rate may be modified by the commissioner on the
29 commissioner's own motion or upon motion of an insurer or organization.
30 The interim rate or any modification thereof shall take effect prospec-
31 tively in contracts of insurance written or renewed 15 days after the com-
32 missioner's decision setting interim rates.

33 (C) When the rates are finally determined, the commissioner shall
34 order any overcharge in the interim rates to be distributed appropriately,
35 except refunds to policyholders the commissioner determines are de min-
36 imis may not be required.

37 (3) (A) Any person or organization aggrieved with respect to any fil-
38 ing that is in effect may make written application to the commissioner for
39 a hearing thereon, ~~provided~~ *except that* the insurer or rating organization
40 that made the filing may not proceed under this subsection. The appli-
41 cation shall specify the grounds to be relied on by the applicant.

42 (B) If the commissioner finds the application is made in good faith,
43 that the applicant would be so aggrieved if the applicant's grounds are

1 established, and that such grounds otherwise justify holding such a hear-
2 ing, the commissioner shall, within 30 days after receipt of the application,
3 hold a hearing on not less than 10 days' written notice to the applicant
4 and every insurer and rating organization that made such filing.

5 (C) Every rating organization receiving a notice of hearing or copy of
6 an order under this section, shall promptly notify all its members or sub-
7 scribers affected by the hearing or order. Notice to a rating organization
8 of a hearing or order shall be deemed notice to its members or
9 subscribers.

10 (f) No insurer shall make or issue a contract or policy except in ac-
11 cordance with filings which have been filed or approved for such insurer
12 as provided in this act.

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

18 (h) Except for workers compensation and employer's liability line, the
19 following categories of commercial lines risks are considered special risks
20 which are exempt from the filing requirements in this section:

- 21 (1) Risks that are written on an excess or umbrella basis;
22 (2) commercial risks, or portions thereof, that are not rated according
23 to manuals, rating plans, or schedules including "a" rates;
24 (3) large risks; and
25 (4) special risks designated by the commissioner, including but not
26 limited to risks insured under highly protected risks rating plans, com-
27 mercial aviation, credit insurance, boiler and machinery, inland marine,
28 fidelity, surety and guarantee bond insurance risks.

29 (i) For the purposes of this subsection, "large risk" means:

- 30 (1) An insured that has total insured property values of \$5,000,000
31 or more;
32 (2) an insured that has total annual gross revenues of \$10,000,000 or
33 more; or
34 (3) an insured that has in the preceding calendar year a total paid
35 premium of \$50,000 or more for property insurance, \$50,000 or more for
36 general liability insurance, or \$100,000 or more for multiple lines policies.
37 (j) The exemption for any large risk contained in subsection (h) shall
38 not apply to workers compensation and employer's liability insurance,
39 insurance purchasing groups, and the basic coverage required by K.S.A.
40 40-3401 et seq., and amendments thereto.

41 (k) Underwriting files, premium, loss and expense statistics, financial
42 and other records pertaining to special risks written by any insurer shall
43 be maintained by the insurer and shall be subject to examination by the

1 commissioner.

2 New Sec. ~~4~~ [3.] (a) Insurers may increase or decrease premiums on
3 a given risk basis without documentation up to 40% based on any factor,
4 except the rate adjustment made pursuant to this section cannot:

5 (1) Be based upon the race, creed, national origin or religion of the
6 insured.

7 (2) Apply to insurance covering:

8 (A) Risks of a personal nature, including insurance for homeowners,
9 tenants, private passenger nonfleet automobiles, mobile homes and other
10 property and casualty insurance for personal, family or household needs;

11 (B) farms and ranches, including crop insurance;

12 (C) workers compensation; or

13 (D) coverage required by K.S.A. 40-3401 et seq., and amendments
14 thereto.

15 (b) By rules and regulations adopted in accordance with the rules and
16 regulations filing act, the commissioner of insurance may broaden the
17 range of plus or minus 40% for any line or type of insurance subject to
18 K.S.A. 40-955, and amendments thereto, if the commissioner of insurance
19 finds that the:

20 (1) Utilization of this section by the insurance industry has produced
21 a significant number of rate modifications at or near the upper limit and
22 at the lower limit of the allowable range of modification; and

23 (2) modifiers at and near the upper and lower limits of the allowable
24 range of modification appear to be predominantly correlated with indi-
25 vidual risk factors that relate to expected losses and expenses.

26 (c) By rules and regulations adopted in accordance with the rules and
27 regulations filing act, the commissioner of insurance may reduce the
28 range of plus or minus 40% for any line or type of insurance subject to
29 K.S.A. 40-955, and amendments thereto, if the commissioner of insurance
30 finds that modifiers at or near the upper or lower limits of the allowable
31 range of modification are not predominantly correlated with individual
32 risk factors that relate to expected losses and expenses, but such reduction
33 shall not reduce the range to less than plus or minus 25%.

34 (d) Any insurer aggrieved by the commissioner's findings pursuant to
35 this section may appeal the same pursuant to the Kansas administrative
36 procedure act.

37 Sec. ~~5~~ [4.] K.S.A. 40-3104 is hereby amended to read as follows:
38 40-3104. (a) Every owner shall provide motor vehicle liability insurance
39 coverage in accordance with the provisions of this act for every motor
40 vehicle owned by such person, unless such motor vehicle: (1) Is included
41 under an approved self-insurance plan as provided in subsection (f); (2)
42 is used as a driver training motor vehicle, as defined in K.S.A. 72-5015,
43 and amendments thereto, in an approved driver training course by a

1 school district or an accredited nonpublic school under an agreement with
2 a motor vehicle dealer, and such motor vehicle liability insurance cover-
3 age is provided by the school district or accredited nonpublic school; (3)
4 is included under a qualified plan of self-insurance approved by an agency
5 of the state in which such motor vehicle is registered and the form pre-
6 scribed in subsection (b) of K.S.A. 40-3106, and amendments thereto,
7 has been filed; or (4) is expressly exempted from the provisions of this
8 act.

9 (b) An owner of an uninsured motor vehicle shall not permit the
10 operation thereof upon a highway or upon property open to use by the
11 public, unless such motor vehicle is expressly exempted from the provi-
12 sions of this act.

13 (c) No person shall knowingly drive an uninsured motor vehicle upon
14 a highway or upon property open to use by the public, unless such motor
15 vehicle is expressly exempted from the provisions of this act.

16 (d) Any person operating a motor vehicle upon a highway or upon
17 property open to use by the public shall display, upon demand, evidence
18 of financial security to a law enforcement officer. The law enforcement
19 officer shall issue a citation to any person who fails to display evidence of
20 financial security upon such demand. The law enforcement officer shall
21 attach a copy of the insurance verification form prescribed by the secre-
22 tary of revenue to the copy of the citation forwarded to the court.

23 No citation shall be issued to any person for failure to provide proof of
24 financial security when evidence of financial security meeting the stan-
25 dards of subsection (e) is displayed upon demand of a law enforcement
26 officer. Whenever the authenticity of such evidence is questionable, the
27 law enforcement officer may initiate the preparation of the insurance
28 verification form prescribed by the secretary of revenue by recording
29 information from the evidence of financial security displayed. The officer
30 shall immediately forward the form to the department of revenue, and
31 the department shall proceed with verification in the manner prescribed
32 in the following paragraph. Upon return of a form indicating that insur-
33 ance was not in force on the date indicated on the form, the department
34 shall immediately forward a copy of the form to the law enforcement
35 officer initiating preparation of the form.

36 (e) Unless the insurance company subsequently submits an insurance
37 verification form indicating that insurance was not in force, no person
38 charged with violating subsections (b), (c) or (d) shall be convicted if such
39 person produces in court, within 10 days of the date of arrest or of issu-
40 ance of the citation, evidence of financial security for the motor vehicle
41 operated, which was valid at the time of arrest or of issuance of the ci-
42 tation. For the purpose of this subsection, evidence of financial security
43 shall be provided by a policy of motor vehicle liability insurance, an iden-

1 tification card or certificate of insurance issued to the policyholder by the
2 insurer which provides the name of the insurer, the policy number and
3 the effective and expiration dates of the policy, or a certificate of self-
4 insurance signed by the commissioner of insurance. Upon the production
5 in court of evidence of financial security, the court shall record the in-
6 formation displayed thereon on the insurance verification form prescribed
7 by the secretary of revenue, immediately forward such form to the de-
8 partment of revenue, and stay any further proceedings on the matter
9 pending a request from the prosecuting attorney that the matter be set
10 for trial. Upon receipt of such form the department shall mail the form
11 to the named insurance company for verification that insurance was in
12 force on the date indicated on the form. It shall be the duty of insurance
13 companies to notify the department within 30 calendar days of the receipt
14 of such forms of any insurance that was not in force on the date specified.
15 Upon return of any form to the department indicating that insurance was
16 not in force on such date, the department shall immediately forward a
17 copy of such form to the office of the prosecuting attorney or the city
18 clerk of the municipality in which such prosecution is pending when the
19 prosecuting attorney is not ascertainable. Receipt of any completed form
20 indicating that insurance was not in effect on the date specified shall be
21 prima facie evidence of failure to provide proof of financial security and
22 violation of this section. A request that the matter be set for trial shall be
23 made immediately following the receipt by the prosecuting attorney of a
24 copy of the form from the department of revenue indicating that insur-
25 ance was not in force. Any charge of violating subsection (b), (c) or (d)
26 shall be dismissed if no request for a trial setting has been made within
27 60 days of the date evidence of financial security was produced in court.

28 (f) Any person in whose name more than 25 motor vehicles are reg-
29 istered in Kansas may qualify as a self-insurer by obtaining a certificate
30 of self-insurance from the commissioner of insurance. The certificate of
31 self-insurance issued by the commissioner shall cover such owned vehi-
32 cles and those vehicles, registered in Kansas, leased to such person if the
33 lease agreement requires that motor vehicle liability insurance on the
34 vehicles be provided by the lessee. Upon application of any such person,
35 the commissioner of insurance may issue a certificate of self-insurance,
36 if the commissioner is satisfied that such person is possessed and will
37 continue to be possessed of ability to pay any liability imposed by law
38 against such person arising out of the ownership, operation, maintenance
39 or use of any motor vehicle described in this subsection. A self-insurer
40 shall provide liability coverage subject to the provisions of subsection (e)
41 of K.S.A. 40-3107, and amendments thereto, arising out of the ownership,
42 operation, maintenance or use of a self-insured motor vehicle in those
43 instances where the lessee or the rental driver, if not the lessee, does not

1 have a motor vehicle liability insurance policy or insurance coverage pur-
2 suant to a motor vehicle liability insurance policy or certificate of insur-
3 ance or such insurance policy for such leased or rented vehicle. Such
4 liability coverage shall be provided to any person operating a self-insured
5 motor vehicle with the expressed or implied consent of the self-insurer.

6 Upon notice and a hearing in accordance with the provisions of the
7 Kansas administrative procedure act, the commissioner of insurance may
8 cancel a certificate of self-insurance upon reasonable grounds. Failure to
9 provide liability coverage or personal injury protection benefits required
10 by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any
11 liability imposed by law arising out of the ownership, operation, mainte-
12 nance or use of a motor vehicle registered in such self-insurer's name, or
13 to otherwise comply with the requirements of this subsection shall con-
14 stitute reasonable grounds for the cancellation of a certificate of self-
15 insurance. Reasonable grounds shall not exist unless such objectionable
16 activity occurs with such frequency as to indicate a general business
17 practice.

18 Self-insureds shall investigate claims in a reasonably prompt manner,
19 handle such claims in a reasonable manner based on available information
20 and effectuate prompt, fair and equitable settlement of claims in which
21 liability has become reasonably clear.

22 As used in this subsection, "liability imposed by law" means the stated
23 limits of liability as provided under subsection (e) of K.S.A. 40-3107, and
24 amendments thereto.

25 Nothing in this subsection shall preclude a self-insurer from pursuing
26 all rights of subrogation against another person or persons.

27 ~~(g) (1) Any person violating~~ *Upon a first or subsequent conviction of*
28 *a violation of any provision of this section, a person shall be guilty of a*
29 *class B misdemeanor and shall be subject to a fine of not less than \$300*
30 *nor more than \$1,000 or confinement in the county jail for a term of not*
31 *more than six months, or both such fine and confinement.*

32 ~~(2) Any person convicted of violating~~ *On a second or subsequent con-*
33 *viction of a violation of any provision of this section within three years of*
34 ~~*any such prior conviction*~~ *within five years of any such prior conviction,*
35 *a person shall be guilty of a class A misdemeanor and shall be subject to*
36 ~~*a fine of*~~ *not less than \$800 nor more than \$2,500.*

37 (h) In addition to any other penalties provided by this act for failure
38 to have or maintain financial security in effect, the director, upon receipt
39 of a report required by K.S.A. 8-1607 or 8-1611, and amendments
40 thereto, or a denial of such insurance by the insurance company listed on
41 the form prescribed by the secretary of revenue pursuant to subsection
42 (d) of this section, shall, upon notice and hearing as provided by K.S.A.
43 40-3118, and amendments thereto:

- 1 (1) Suspend:
- 2 (A) The license of each driver in any manner involved in the accident;
- 3 (B) the license of the owner of each motor vehicle involved in such
4 accident, unless the vehicle was stolen at the time of the accident, proof
5 of which must be established by the owner of the motor vehicle. Theft
6 by a member of the vehicle owner's immediate family under the age of
7 18 years shall not constitute a stolen vehicle for the purposes of this
8 section;
- 9 (C) if the driver is a nonresident, the privilege of operating a motor
10 vehicle within this state; or
- 11 (D) if such owner is a nonresident, the privilege of such owner to
12 operate or permit the operation within this state of any motor vehicle
13 owned by such owner; and
- 14 (2) revoke the registration of all vehicles owned by the owner of each
15 motor vehicle involved in such accident.
- 16 (i) The suspension or revocation requirements in subsection (h) shall
17 not apply:
- 18 (1) To the driver or owner if the owner had in effect at the time of
19 the accident an automobile liability policy as required by K.S.A. 40-3107,
20 and amendments thereto, with respect to the vehicle involved in the
21 accident;
- 22 (2) to the driver, if not the owner of the vehicle involved in the ac-
23 cident, if there was in effect at the time of the accident an automobile
24 liability policy with respect to such driver's driving of vehicles not owned
25 by such driver;
- 26 (3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103,
27 and amendments thereto;
- 28 (4) to the driver or owner of any vehicle involved in the accident
29 which was exempt from the provisions of this act pursuant to K.S.A. 40-
30 3105, and amendments thereto;
- 31 (5) to the owner of a vehicle described in subsection (a)(2).
- 32 (j) (1) For the purposes of provisions (1) and (2) of subsection (i) of
33 this section, the director may require verification by an owner's or driver's
34 insurance company or agent thereof that there was in effect at the time
35 of the accident an automobile liability policy as required in this act.
- 36 ~~Any suspension or revocation effected hereunder shall remain in effect~~
37 ~~until satisfactory proof of financial security has been filed with the director~~
38 ~~as required by subsection (d) of K.S.A. 40-3118, and amendments thereto,~~
39 ~~and such person has been released from liability or is a party to an action~~
40 ~~to determine liability pursuant to which the court temporarily stays such~~
41 ~~suspension pending final disposition of such action, has entered into an~~
42 ~~agreement for the payment of damages, or has been finally adjudicated~~
43 ~~not to be liable in respect to such accident and evidence of any such fact~~

1 has been filed with the director and has paid the reinstatement fee herein
2 prescribed. Such reinstatement fee shall be \$100 except that if the reg-
3 istration of a motor vehicle of any owner is revoked within one year fol-
4 lowing a prior revocation of the registration of a motor vehicle of such
5 owner under the provisions of this act such fee shall be \$300.
6 ~~—(k) The provisions of this section shall not apply to motor carriers of~~
7 ~~property or passengers regulated by the corporation commission of the~~
8 ~~state of Kansas.~~
9 ~~—(l) The provisions of subsection (d) shall not apply to vehicle dealers,~~
10 ~~as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being~~
11 ~~offered for sale by such dealers.~~
12 (2) *Subject to the provisions of subsection (k), any suspension or rev-*
13 *ocation effected hereunder shall remain in effect until such person:*
14 (A) *Has filed satisfactory proof of financial security with the director*
15 *as required by subsection (d) of K.S.A. 40-3118 and amendments thereto;*
16 (B) *has paid the reinstatement fee herein prescribed; and*
17 (C) (i) *has been released from liability;*
18 (ii) *is a party to an action to determine liability pursuant to which*
19 *the court temporarily stays such suspension pending final disposition of*
20 *such action;*
21 (iii) *has entered into an agreement for the payment of damages; or*
22 (iv) *has been finally adjudicated not to be liable in respect to such*
23 *accident and evidence of any such fact has been filed with the director.*
24 (3) *The reinstatement fee shall be \$100 except that if the registration*
25 *of a motor vehicle of any owner is revoked within one year following a*
26 *prior revocation of the registration of a motor vehicle of such owner under*
27 *the provisions of this act such fee shall be \$300.*
28 (k) (1) *Whenever any person whose license has been suspended or*
29 *revoked pursuant to this section is involved in an accident and has entered*
30 *into an agreement with any driver, or such driver's insurer, who has been*
31 *damaged or whose vehicle has been damaged to pay for such damage and*
32 *such person defaults on payments under such agreement, the driver or*
33 *the driver's insurer, as appropriate, shall notify the director within 60*
34 *days of the date of default.*
35 (2) *Upon receipt of the notice of default, the director shall immedi-*
36 *ately suspend such person's license and registration. If such person is a*
37 *nonresident, the director shall immediately suspend such person's non-*
38 *resident's privilege to operate a motor vehicle in this state.*
39 (3) *Except as provided in paragraph (4), such person's driver's li-*
40 *cence, registration and nonresident's operating privilege shall remain so*
41 *suspended and shall not be renewed, nor shall any such license or regis-*
42 *tration be thereafter issued in the name of such person, including any*
43 *such person not previously licensed, unless and until:*

- 1 (A) *The director receives notice payments under the agreement re-*
2 *ferred to in paragraph (1) have been resumed and that payments under*
3 *such agreement are no longer in default;*
4 (B) *such person has filed satisfactory proof of financial responsibility*
5 *with the director as required by subsection(d) of K.S.A. 40-3118 and*
6 *amendments thereto; and*
7 (C) *the reinstatement fee required by subsection (j) has been paid.*
8 (4) *Upon due notice to the director that the conditions of paragraph*
9 *(3) have been fulfilled, such person may obtain from the director an order*
10 *restoring such person's driver's license, registration and nonresident's op-*
11 *erating privilege to operate a motor vehicle in this state conditioned upon*
12 *such person's continued compliance with the agreement referred to in*
13 *paragraph (1).*
14 (5) *In the event such person fails to make any further payment under*
15 *the agreement referred to in paragraph (1) when such payment is due,*
16 *the director, upon receipt of notice of such default, shall immediately*
17 *suspend the license, registration or nonresident's operating privilege of*
18 *such person until all payments have been made under the agreement re-*
19 *ferred to in paragraph (1). No suspension of such person's license, regis-*
20 *tration or nonresident's privilege to operate a motor vehicle in this state*
21 *shall be reinstated pursuant to paragraph (4).*
22 (l) *The provisions of this section shall not apply to motor carriers of*
23 *property or passengers regulated by the corporation commission of the*
24 *state of Kansas.*
25 (m) *The provisions of subsection (d) shall not apply to vehicle dealers,*
26 *as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being*
27 *offered for sale by such dealers.*
28 New Sec. ~~6~~ **[5.]** (a) Every health insurance plan for which utilization
29 review is performed shall include a description of the health insurance
30 plan's procedures for an insured to obtain an internal appeal or review of
31 an adverse decision. This description shall include all applicable time
32 periods, contact information, rights of the insured and available levels of
33 appeal. If the health insurer uses a utilization review organization, the
34 insured shall be notified of the name of such utilization review organi-
35 zation. The health insurance plan shall provide an insured with written
36 or electronic notification of any adverse decision, and a description of the
37 health insurance plan's internal appeal or review procedure, including the
38 insured's right to external review as provided in K.S.A. 40-22a14 and
39 amendments thereto.
40 (b) If the health insurance plan contains a provision for two levels of
41 internal appeal or review of a health care decision which is adverse to the
42 insured, the health insurance plan shall allow the insured to voluntarily
43 waive such insured's right to the second internal appeal or review. Such

1 waiver shall be made in writing to the health insurance plan and shall
2 constitute the exhaustion of all available internal appeal or review pro-
3 cedures within the meaning of subsection (d) of K.S.A. 40-22a14 and
4 amendments thereto.

5 (c) If an insured elects to request the second internal appeal or review
6 of a health care decision which is adverse to the insured, the insured shall
7 have the right to appear in person before a designated representative or
8 representatives of the health insurance plan or utilization review organi-
9 zation at the second internal appeal or review meeting. If a majority of
10 the designated representatives of the health plan or utilization review
11 organization who will be deciding the second internal appeal or review
12 cannot be present in person, by telephone or by other electronic means,
13 at least one of those designated representatives who will be deciding the
14 second internal appeal or review shall be a physician and shall be present
15 in person, by telephone or by other electronic means. No physician or
16 other health care provider serving as a reviewer in an internal appeal or
17 review of an adverse decision shall be liable in damages to the insured or
18 the health insurance plan for any opinion rendered as part of the internal
19 appeal or review.

20 (d) All second internal appeals or reviews shall provide that the in-
21 sured has a right to:

22 (1) Receive from the health insurance plan or utilization review or-
23 ganization, upon request, copies of all documents, records and other in-
24 formation that are not confidential or privileged relevant to the insured's
25 request for benefits;

26 (2) have a reasonable and adequate amount of time to present the
27 insured's case to a designated representative or representatives of the
28 health insurance plan or utilization review organization who will be de-
29 ciding the second internal appeal or review;

30 (3) submit written comments, documents, records and other material
31 relating to the request for benefits for the second internal appeal or re-
32 view panel to consider when conducting the second internal appeal or
33 review both before and, if applicable, at the second internal appeal or
34 review meeting;

35 (4) prior to or during the second internal appeal or review meeting,
36 ask questions relevant to the subject matter of the internal appeal or
37 review of any representative of the health insurance plan or utilization
38 review organization serving on the internal appeal or review panel pro-
39 vided that such representative may respond verbally if the question is
40 asked in person during an insured's appearance before the internal appeal
41 or review panel or in writing if the questions are asked in writing, not
42 more than 30 days from receipt of such written questions;

43 (5) be assisted or represented at the second internal appeal or review

1 meeting by an individual or individuals of the insured's choice; and
2 (6) record the proceedings of the second internal appeal or review
3 meeting at the expense of the insured.
4 (e) An insured, or the insured's authorized representative, wishing to
5 request to appear in person before the second internal appeal or review
6 panel consisting of the health insurance plan's or utilization review or-
7 ganization's designated representative or representatives shall make the
8 request to the health insurance plan or utilization review organization
9 within five working days before the date of the scheduled review meeting
10 except that in the case of an emergency medical condition, such request
11 must be made no less than 24 hours prior to the scheduled review
12 meeting.
13 (f) The health insurance plan or utilization review organization shall
14 provide the insured a written decision setting forth the relevant facts and
15 conclusions supporting its decision within:
16 (1) Seventy-two hours if the second internal appeal or review involves
17 an emergency medical condition as defined by subsection (b) of K.S.A.
18 40-22a13 and amendments thereto;
19 (2) fifteen business days if the second internal appeal or review in-
20 volves a pre-service claim; and
21 (3) thirty days if the second internal appeal or review involves a post-
22 service claim.
23 (g) For the purposes of this section:
24 (1) "Health insurance plan" shall have the meaning ascribed to it in
25 K.S.A. 40-22a13 and amendments thereto.
26 (2) "Insured" shall have the meaning ascribed to it in K.S.A. 40-22a13
27 and amendments thereto.
28 (3) "Insurer" shall have the meaning ascribed to it in K.S.A. 40-22a13
29 and amendments thereto.
30 (4) "Adverse decision" shall have the meaning ascribed to it in K.S.A.
31 40-22a13, and amendments thereto.
32 (5) "Pre-service claim" means a request for a claims decision when
33 prior authorization of services is required.
34 (6) "Post-service claim" means a request for a claims decision for
35 services that have already been provided.
36 (h) This section shall be a part of and supplemental to the utilization
37 review act.
38 Sec. ~~7.~~ **[6.]** K.S.A. ~~40-954~~ 40-955 and 40-3104 and K.S.A. 2005
39 Supp. 40-216 are hereby repealed.
40 Sec. ~~8.~~ **[7.]** This act shall take effect and be in force from and after
41 its publication in the statute book.