

SENATE BILL No. 178

By Committee on Financial Institutions and Insurance

2-10

1 AN ACT concerning surplus lines insurance; authorizing the
2 commissioner to enter into agreements with other states involving
3 surplus lines; pertaining to premium taxes on surplus lines insurance;
4 amending K.S.A. 40-246c and 40-246e and K.S.A. 2010 Supp. 40-
5 246b and repealing the existing sections.

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

8 New Section 1. (a) Sections 1 through 5, and amendments
9 thereto, shall be known and may be cited as the nonadmitted insurance
10 act.

11 (b) The purposes of this act are to:

12 (1) Comply with the requirements of the nonadmitted and
13 reinsurance reform act of 2010, as incorporated into the Dodd-Frank wall
14 street reform and consumer protection act, 15 U.S.C. § 8201, including
15 any applicable federal regulations and guidelines implementing that act
16 and as may be hereinafter amended;

17 (2) protect the revenues received from insurance premium taxes of
18 this state;

19 (3) promote the interests of persons seeking surplus lines insurance
20 in this state;

21 (4) insure that surplus lines insurance be placed with reputable and
22 financially sound nonadmitted insurers;

23 (5) establish the requirements for licensure and rules governing the
24 conduct of agents who sell surplus lines insurance;

25 (6) promote the interests of admitted surplus lines insurers; and

26 (7) promote nationwide uniform requirements, forms and procedures
27 that facilitate the reporting, payment, collection and allocation of
28 premium taxes for nonadmitted insurance for multi-state risks.

29 New Sec. 2. As used in this act: (a) "Home state" means:

30 (1) With respect to an insured:

31 (A) The state in which an insured maintains its principal place of
32 business or, in the case of an individual, the individual's principal
33 residence; or

34 (B) if 100% of the insured risk is located out of the state referred to
35 in subparagraph (A), the state to which the greatest percentage of the
36 insured's taxable premium for that insurance contract is allocated.

1 (2) If more than one insured from an affiliated group are named
2 insureds on a single nonadmitted insurance contract, the home state as
3 determined pursuant to subsection (a) (1) (A), of the member of the
4 affiliated group that has the largest percentage of premium attributed to it
5 under such insurance contract.

6 (3) When the group policyholder pays 100% of the premium from its
7 own funds, the home state of the group policyholder as determined
8 pursuant to subsection (a) (1) (A).

9 (4) When the group policyholder does not pay 100% of the premium
10 from its own funds, the home state of the group member as determined
11 pursuant to subsection (a) (1) (A).

12 (b) "Principal place of business" means, with respect to determining
13 the home state of the insureds:

14 (1) The state where the insured maintains its headquarters and where
15 the insured's high-level officers direct, control and coordinate the
16 business activities;

17 (2) if the insured's high-level officers direct, control and coordinate
18 the business activities in more than one state, the state in which the
19 greatest percentage of the insured's taxable premium for that insurance
20 contract is allocated; or

21 (3) if the insured maintains its headquarters or the insured's high-
22 level officers direct, control and coordinate the business activities outside
23 any state, the state to which the greatest percentage of the insured's
24 taxable premium for that insurance contract is allocated.

25 (c) "Principal residence" means, with respect to determining the
26 home state of the insured:

27 (1) The state where the insured resides for the greatest number of
28 days during a calendar year; or

29 (2) if the insured's principal residence is located outside any state,
30 the state to which the greatest percentage of the insured's taxable
31 premium for that insurance contract is allocated.

32 New Sec. 3. The commissioner of insurance is authorized to enter
33 into agreements with other states as necessary to achieve the purposes of
34 this act.

35 New Sec. 4. The commissioner may adopt rules and regulations
36 necessary to carry out this act.

37 New Sec. 5. If any provision of this act or the application of such
38 provision to any person or circumstances shall be held invalid, the
39 invalidity does not affect other provisions of the act which can be given
40 effect without the invalid provision or application, and to this end the
41 provisions of this act are severable.

42 Sec. 6. K.S.A. 2010 Supp. 40-246b is hereby amended to read as
43 follows: 40-246b. (a) *Upon receipt of a proper application*, the

1 commissioner of insurance may issue to any duly licensed resident agent
2 of this state, who has been licensed as a fire or casualty, or both, resident
3 agent in this or any other state or combination thereof, for three
4 consecutive years immediately prior to application for the type of license
5 herein prescribed, upon proper application, an excess coverage license to
6 ~~negotiate~~ *negotiate an excess lines coverage license to any licensed property and*
7 *casualty agent of this state or any other state. Any agent so licensed may*
8 *negotiate for insureds whose home state is this state, the types of*
9 *contracts of fire insurance enumerated in K.S.A. 40-901, and*
10 *amendments thereto, and the type of casualty insurance contracts*
11 *enumerated in K.S.A. 40-1102, and amendments thereto, or reinsurance,*
12 *or to place risks, or to effect insurance or reinsurance for persons or*
13 *corporations other than such agent, with insurers not authorized to do*
14 *business in this state. An agent, as defined in K.S.A. 40-241e2010 Supp.*
15 *40-4902, and amendments thereto, may place the kind or kinds of*
16 *business specified in this act for which such agent is licensed pursuant to*
17 *K.S.A. 40-240 and 40-2412010 Supp. 40-4903 and subsection (d) of*
18 *K.S.A. 40-4906, and amendments thereto, with an insurer not authorized*
19 *to do business in this state by placing such business with a person*
20 *licensed pursuant to the provisions of this act and may share in the*
21 *applicable commissions on such business. Before any such license shall*
22 *be issued, the applicant shall submit proper application on a form*
23 *prescribed by the commissioner, which application shall be accompanied*
24 *by a fee of \$50. Such license shall be renewable each year on May 1,*
25 *upon the payment of a \$50 fee. Excess lines agents licensed by the*
26 *department on the effective date of this act shall be exempt from the*
27 *experience requirement.*

28 ~~The agent so licensed shall on or before March 1 of each year, (b)~~
29 *On a date prescribed by the commissioner, and quarterly thereafter, the*
30 *agent so licensed shall file with the insurance department of this state, a*
31 *sworn affidavit or statement to the effect that, after diligent effort, such*
32 *agent has been unable to secure the amount of insurance required to*
33 *protect the property, person, or firm described in such agent's affidavit or*
34 *statement from loss or damage in regularly admitted companies during*
35 *the preceding year. Mere rate differential shall not be grounds for placing*
36 *a particular risk in a nonadmitted carrier when an admitted carrier would*
37 *accept such risk at a different rate. The licensed excess coverage agent*
38 *must, prior to placing insurance with an insurer not authorized to do*
39 *business in this state, obtain the written consent of the prospective named*
40 *insured and provide such insured the following information in a form*
41 *promulgated by the commissioner:*

42 ~~(a)(1)~~ *A statement that the coverage will be obtained from an insurer*
43 *not authorized to do business in this state;*

1 ~~(b)~~(2) a statement that the insurer's name appears on the list of
2 companies maintained by the commissioner pursuant to K.S.A. 40-246e,
3 and amendments thereto;

4 ~~(e)~~(3) a notice that the insurer's financial condition, policy forms,
5 rates and trade practices are not subject to the review or jurisdiction of the
6 commissioner;

7 ~~(d)~~(4) a statement that the protection of the guaranty associations is
8 not afforded to policyholders of the insurer; and

9 ~~(e)~~(5) a statement or notice with respect to any other information
10 deemed necessary by the commissioner pertinent to insuring with an
11 insurer not authorized to do business in this state.

12 (c) In the event the insured desires that coverage be bound with an
13 insurer not admitted to this state and it is not possible to obtain the written
14 consent of the insured prior to binding the coverage, the excess lines
15 agent may bind the coverage after advising the insured of the information
16 set out above and shall obtain written confirmation that the insured
17 desires that coverage be placed with an insurer not admitted to this state
18 within 30 days after binding coverage.

19 (d) When business comes to a licensed excess lines agent *in which*
20 *this state is the home state* for placement with an insurer not authorized to
21 do business in this state from an agent not licensed as an excess lines
22 agent, it shall be the responsibility of the licensed excess lines agent to
23 ascertain that the insured has been provided the preceding information
24 and has consented to being insured with an insurer not authorized to do
25 business in this state. Each excess lines agent shall keep a separate record
26 book in such agent's office showing the transactions of fire and casualty
27 insurance and reinsurance placed in companies not authorized to do
28 business in this state, the amount of gross premiums charged thereon, the
29 insurer ~~in which~~ *with which the policy was* placed, the date, term and
30 number of the policy, the location and nature of the risk, the name of the
31 ~~assured~~ *insured* and such other information as the commissioner may
32 require and such record shall be available at all times for inspection by
33 the commissioner of insurance or the commissioner's authorized
34 representatives. The commissioner may revoke or suspend any license
35 issued pursuant to the provisions of this act in the same manner and for
36 the same reasons prescribed by K.S.A. ~~40-242~~2010 *Supp. 40-4909*, and
37 amendments thereto.

38 (e) Any policy issued under the provisions of this statute shall have
39 stamped or endorsed in a prominent manner thereon, the following: This
40 policy is issued by an insurer not authorized to do business in Kansas
41 and, as such, the form, financial condition and rates are not subject to
42 review by the commissioner of insurance and the insured is not protected
43 by any guaranty fund.

1 (f) If business is placed with a nonadmitted company that is
2 subsequently determined to be insolvent, the excess lines agent placing
3 such business with such company is relieved of any responsibility to the
4 insured as it relates to such insolvency, if the excess lines agent has
5 satisfactorily complied with all requirements of this section pertaining to
6 notification of the insured, has properly obtained the written consent of
7 the insured and has used due diligence in selecting the insurer. It shall be
8 presumed that due diligence was used in selecting the insurer if such
9 insurer was on the list compiled pursuant to K.S.A. 40-246e, and
10 amendments thereto, at the time coverage first became effective.

11 Sec. 7. K.S.A. 40-246c is hereby amended to read as follows: 40-
12 246c. Each licensed agent shall file with the commissioner on or before
13 March 1 of each year a statement on a form prescribed by the
14 commissioner, accounting for the gross premiums upon all policies
15 written on risks situated in this state up to January 1 in each year for the
16 year next preceding and the licensee shall transmit to the commissioner,
17 with such affidavit or statement, a sum equal to 6% of the gross
18 premiums upon all policies procured by such agent on risks situated in
19 this state written under the provisions of this act. Any individual placing a
20 policy with an insurer not authorized to do business in this state on a risk
21 domiciled in a state other than this state, but also covering a risk or
22 location in Kansas, shall file with the commissioner a statement in the
23 form prescribed by the commissioner, describing the risk and shall pay to
24 the commissioner a sum equal to 6% of the portion of the premium
25 applicable to the risk located in Kansas within 120 days after writing the
26 risk. *(a) On a date prescribed by the commissioner and quarterly
27 thereafter, each licensed agent shall collect and pay to the commissioner
28 a sum based on the total gross premiums charged, less any return
29 premiums, for surplus lines insurance provided by the licensee pursuant
30 to the license. Where the insurance covers properties, risks or exposures
31 located or to be performed both in and out of this state, the sum payable
32 shall be computed based on:*

33 (1) *An amount equal to 6% of that portion of the gross premiums
34 allocated to this state; plus*

35 (2) *an amount equal to the portion of the premiums allocated to
36 other states or territories on the basis of the tax rates and fees applicable
37 to properties, risks or exposures located or to be performed outside of
38 this state; less*

39 (3) *the amount of gross premiums allocated to this state and
40 returned to the insured.*

41 (b) *The tax on any portion of the premium unearned at termination
42 of insurance, if any, having been credited by the state to the licensee shall
43 be returned to the policyholder directly by the surplus lines licensee or*

1 *through the producing broker. The surplus lines licensee is prohibited*
2 *from rebating any part of the tax for any reason. To the extent that other*
3 *states where portions of the properties, risks or exposures reside have*
4 *failed to enter into a compact or reciprocal allocation procedure with this*
5 *state, the net premium tax collected shall be retained by this state.*

6 (c) The individual responsible for filing the statement shall be the
7 agent who signs the policy or the agent of record with the company. The
8 commissioner of insurance shall collect double the amount of tax herein
9 provided from any licensee or other responsible individual as herein
10 described who shall fail, refuse or neglect to transmit the required
11 affidavit or statement or shall fail to pay the tax imposed by this section,
12 to the commissioner within the period specified.

13 Sec. 8. K.S.A. 40-246e is hereby amended to read as follows: 40-
14 246e. The commissioner shall maintain a list of insurers not authorized to
15 do business in this state for review by any interested person. Only those
16 insurers who have filed a certified copy of their most recent annual
17 statement with the commissioner in the form prescribed by K.S.A. 40-
18 225, and amendments thereto, or, if domiciled outside the United States,
19 have filed their most recent annual statement with the national association
20 of insurance commissioners may appear on the list. No excess lines agent
21 shall place insurance on a Kansas domiciled risk with an insurer whose
22 name does not appear on this list. No company shall appear on the list
23 whose capital or surplus as shown on the annual statement does not equal
24 or exceed ~~\$1,500,000~~ \$4,500,000. Individual unincorporated insurers not
25 listed by the national association of insurance commissioners may appear
26 on the list if they are authorized to transact an insurance business in at
27 least one state of the United States, possess assets which are held in trust
28 for the benefit of American policyholders in the sum of not less than
29 \$50,000,000 and pay the filing fee required by this section. Insurance
30 exchanges who issue contracts on behalf of their members and pay the
31 filing fee required by this section may appear on the list if their individual
32 members have a capital or surplus equal to or in excess of \$1,500,000 and
33 the aggregate capital or surplus of all members of the exchange is at least
34 \$15,000,000. A nonrefundable filing fee of \$200 shall be required of any
35 insurer submitting its annual statement for review by the commissioner
36 for inclusion on such list. The commissioner shall remove an insurer's
37 name from the listing only when: (a) The insurer requests such removal;
38 ~~or~~ (b) the insurer fails to file its latest annual statement and required filing
39 fee prior to May 1 of each year as required by this section; ~~or~~ (c) the
40 commissioner is notified by the insurance supervisory authority of any
41 state of the United States that such insurer has had its authority to transact
42 business restricted; or has been declared insolvent or placed in
43 receivership, conservatorship, rehabilitation or any similar status wherein

1 the business of the insurer is formally supervised by an insurance
2 supervisory authority; ~~or~~ (d) the commissioner is notified by the N.A.I.C.
3 that any insurer domiciled outside the United States has been declared
4 insolvent or placed in receivership, conservatorship, rehabilitation or any
5 similar status wherein the business of the insurer is formally supervised
6 by an insurance supervisory authority pursuant to an order by any court
7 of competent jurisdiction; ~~or~~ (e) the insurer has failed to effectuate
8 reasonably prompt, fair and equitable payment of just losses and claims
9 in this state; or (f) the insurer encourages, promotes or rewards an agent
10 to violate the provisions of K.S.A. 40-246b, and amendments thereto.
11 There shall be no liability on the part of and no cause of action of any
12 nature shall arise against the commissioner, the commissioner's
13 employees, or the state of Kansas as a result of any insurer's name
14 appearing or not appearing on the list required by this section if such list
15 is constructed and maintained in good faith and without malice.

16 Sec. 9. K.S.A. 40-246c and 40-246e and K.S.A. 2010 Supp. 40-246b
17 are hereby repealed.

18 Sec. 10. This act shall take effect and be in force from and after its
19 publication in the Kansas register.

20