AN ACT concerning workers compensation insurance; pertaining to the
assigned risk pool; amending K.S.A. 2013 Supp. 40-2109 and repealing
the existing section.

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

Section 1. K.S.A. 2013 Supp. 40-2109 is hereby amended to read as
follows: 40-2109. (a) (1) 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) (A) Reasonable rules governing the equitable distribution of risks
by direct insurance, reinsurance or otherwise and their assignment to
insurers;
(b) (B) rates and rate modifications applicable to such risks which
shall be reasonable, adequate and not unfairly discriminatory;
(c) (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) (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 select a
chairperson and select the plan administrator through a competitive bid
process that shall provide for a contract with such plan administrator. The
term of such contract shall not exceed five years.
(i) The competitive bid process shall be initiated by the issuance of a
request for proposal which shall:
(a) Establish all requirements and specifications which the successful
bidder must meet;
(b) not contain any set of requirements and specifications which will
limit the set of potential candidate bidders to one candidate;
(c) not provide any preference for the existing plan administrator;
(d) require the candidate bidder to list all administrative costs,
service fees, costs of administering reinsurance, and any other costs or expenses which will be charged to the assigned risk pool; and
(e) provide a list of all sources of income or revenue which the bidder expects to receive if such bidder is awarded the bid.
(ii) The existing plan administrator may submit a bid, but such plan administrator shall not participate in any review of the bids received or in the selection of the successful bidder.
(iii) The governing board 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.
   (a) One member shall be appointed by the Kansas chamber of commerce for a term of two years;
   (b) one member shall be appointed by the national federation of independent business for a term of one year;
   (c) one member shall be appointed from the Kansas association of insurance agents for a term of two years;
   (d) one member shall be appointed by a domestic insurance company selected by the commissioner of insurance for a term of two years;
   (e) two members shall be appointed by two district foreign insurance companies selected by the commissioner of insurance for a term of one year; and
   (f) one member shall be appointed by the commissioner of insurance for a term of three years.
(iv) The terms of all board members existing on the day preceding the effective date of this act shall terminate on the effective date of this act. This subparagraph shall not prohibit any such board member from being appointed to the new governing board.
(v) Such members shall be appointed for a term of three years. No appointee shall serve more than two consecutive terms; and
(E) for the performance of an independent financial audit. Such audit shall be performed annually on the financial results of the plan. Such audit shall include, but not be limited to:
   (i) Premiums written and earned;
   (ii) losses paid;
   (iii) incurred losses;
(iv) taxes; and
(v) administration and servicing carrier allowances.

(2) In addition, such plan or plans may provide that:
(A) The designated plan administrator establish an office located in the state of Kansas to improve services provided by the plan and to promote and secure courteous and timely service;

(B) money collected for the account of the assigned risk pool may be held in a separate fiduciary account maintained by a federally chartered financial institution domiciled in the state of Kansas. Such fiduciary account shall be used for all payments made on behalf of the assigned risk plan; and

(C) in the event, there is a surplus amount in any policy year which exceeds 5% of the total amount of premiums collected, such surplus may be distributed to the policyholders.

(b) 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.

(c) If no plan meeting the standards set forth in subsections (a), (b) and (c) of subsection (a)(1) 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) (d) 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.

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

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