

**HOUSE BILL No. 2058**

By Committee on Insurance

1-22

1 AN ACT concerning insurance; relating to health insurance; updating  
2 certain definitions pertaining to small employer health plans; amending  
3 K.S.A. 40-2209b and K.S.A. 2018 Supp. 40-2209d and repealing the  
4 existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 40-2209b is hereby amended to read as follows: 40-  
8 2209b. (a) *The provisions of K.S.A. 40-2209b through 40-2209j and 40-  
9 2209m through 40-2209o, and amendments thereto, shall be known and  
10 may be cited as the small employer health insurance availability act.*

11 (b) The purpose and intent of ~~this~~ *the small employer health*  
12 *insurance availability act* are to promote the availability of health  
13 insurance coverage to small employers regardless of their health status or  
14 claims experience, to prevent abusive rating practices, to require disclosure  
15 of rating practices to purchasers, to establish rules regarding renewability  
16 of coverage, to establish limitations on the use of pre-existing condition  
17 exclusions, to provide for development of "basic" and "standard" health  
18 benefit plans to be offered to all small employers, to provide for  
19 establishment of a reinsurance program, and to improve the overall  
20 fairness and efficiency of the small group health insurance market.

21 Sec. 2. K.S.A. 2018 Supp. 40-2209d is hereby amended to read as  
22 follows: 40-2209d. As used in ~~this~~ *the small employer health insurance*  
23 *availability act*:

24 (a) "Actuarial certification" means a written statement by a member  
25 of the American academy of actuaries or other individual acceptable to the  
26 commissioner that a small employer carrier is in compliance with the  
27 provisions of K.S.A. 40-2209h, and amendments thereto, based upon the  
28 person's examination, including a review of the appropriate records and of  
29 the actuarial assumptions and methods used by the small employer carrier  
30 in establishing premium rates for applicable health benefit plans.

31 (b) "Approved service area" means a geographical area, as approved  
32 by the commissioner to transact insurance in this state, within which the  
33 carrier is authorized to provide coverage.

34 (c) "Base premium rate" means, for each class of business as to a  
35 rating period, the lowest premium rate charged or that could have been  
36 charged under the rating system for that class of business, by the small

1 employer carrier to small employers with similar case characteristics for  
2 health benefit plans with the same or similar coverage.

3 (d) "Carrier" or "small employer carrier" means any insurance  
4 company, nonprofit medical and hospital service corporation, nonprofit  
5 optometric, dental, and pharmacy service corporations, municipal group-  
6 funded pool, fraternal benefit society or health maintenance organization,  
7 as these terms are defined ~~by~~ *in chapter 40 of the Kansas Statutes*  
8 *Annotated, and amendments thereto*, that offers health benefit plans  
9 covering eligible employees of one or more small employers in this state.

10 (e) "Case characteristics" means, with respect to a small employer,  
11 the geographic area in which the employees reside; the age and sex of the  
12 individual employees and their dependents; the appropriate industry  
13 classification as determined by the carrier, and the number of employees  
14 and dependents and such other objective criteria as may be approved  
15 family composition by the commissioner. "Case characteristics" shall not  
16 include claim experience, health status and duration of coverage since  
17 issue.

18 (f) "Class of business" means all or a separate grouping of small  
19 employers established pursuant to K.S.A. 40-2209g, and amendments  
20 thereto.

21 (g) "Commissioner" means the commissioner of insurance.

22 (h) "Department" means the insurance department.

23 (i) "Dependent" means the spouse or child of an eligible employee,  
24 subject to applicable terms of the health benefits plan covering such  
25 employee and the dependent eligibility standards established by the board.

26 (j) "Eligible employee" means an employee who works on a full-time  
27 basis, with a normal work week of 30 or more hours, and includes a sole  
28 proprietor, a partner of a partnership or an independent contractor,  
29 provided such sole proprietor, partner or independent contractor is  
30 included as an employee under a health benefit plan of a small employer  
31 but does not include an employee who works on a part-time, temporary or  
32 substitute basis.

33 (k) "Financially impaired" means a member which, after the effective  
34 date of this act, is not insolvent but is:

35 (1) Deemed by the commissioner to be in a hazardous financial  
36 condition pursuant to K.S.A. 40-222d, and amendments thereto; or

37 (2) placed under an order of rehabilitation or conservation by a court  
38 of competent jurisdiction.

39 (l) "Health benefit plan" means any hospital or medical expense  
40 policy, health, hospital or medical service corporation contract, ~~and a plan~~  
41 provided by a municipal group-funded pool, ~~or a~~ health maintenance  
42 organization contract offered by an employer or any certificate issued  
43 under any such policies, contracts or plans. "Health benefit plan" also

1 includes a cafeteria plan authorized by 26 U.S.C. ~~section~~ § 125 ~~which that~~  
2 offers the option of receiving health insurance coverage through a high  
3 deductible health plan and the establishment of a health savings account.  
4 In order for an eligible individual to obtain a high deductible health plan  
5 through the cafeteria plan, such individual shall present evidence to the  
6 employer that such individual has established a health savings account in  
7 compliance with 26 U.S.C. ~~section~~ § 223; and any ~~amendments and~~  
8 regulations *promulgated thereunder*. "Health benefit plan" does not include  
9 policies or certificates covering only accident, credit, dental, disability  
10 income, long-term care, hospital indemnity, medicare supplement,  
11 specified disease, vision care, coverage issued as a supplement to liability  
12 insurance, insurance arising out of a workers compensation or similar law,  
13 automobile medical-payment insurance, or insurance under which benefits  
14 are payable with or without regard to fault and which is statutorily  
15 required to be contained in any liability insurance policy or equivalent  
16 self-insurance.

17 (m) "Health savings account" ~~shall have the same meaning ascribed~~  
18 ~~to it means the same as in subsection (d) of 26 U.S.C. section § 223(d).~~

19 (n) "High deductible health plan" ~~shall mean~~ means a policy or  
20 contract of health insurance or health care plan that meets the criteria  
21 established in ~~subsection (e) of 26 U.S.C. section § 223(c)~~ and any  
22 regulations promulgated thereunder.

23 (o) "Index rate" means, for each class of business as to a rating period  
24 for small employers with similar case characteristics, the arithmetic  
25 average of the applicable base premium rate and the corresponding highest  
26 premium rate.

27 (p) "Initial enrollment period" means the period of time specified in  
28 the health benefit plan during which an individual is first eligible to enroll  
29 in a small employer health benefit plan. Such period shall be no less  
30 favorable than a period beginning on the employee's or member's date of  
31 initial eligibility and ending 31 days thereafter.

32 (q) "Late enrollee" means an eligible employee or dependent who  
33 requests enrollment in a small employer's health benefit plan following the  
34 initial enrollment period provided under the terms of the first plan for  
35 which such employee or dependent was eligible through such small  
36 employer, however an eligible employee or dependent shall not be  
37 considered a late enrollee if:

38 (1) The individual:

39 (A) Was covered under another employer-provided health benefit  
40 plan or was covered under section 607(1) of the employee retirement  
41 income security act of 1974 (ERISA) at the time the individual was  
42 eligible to enroll;

43 (B) states in writing, at the time of the initial eligibility, that coverage

1 under another employer health benefit plan was the reason for declining  
2 enrollment but only if the group policyholder or the accident and sickness  
3 issuer required such a written statement and provided the individual with  
4 notice of the requirement for a written statement and the consequences of  
5 such written statement;

6 (C) has lost coverage under another employer health benefit plan or  
7 under section 607(1) of the employee retirement income security act of  
8 1974 (ERISA) as a result of the termination of employment, reduction in  
9 the number of hours of employment, termination of employer  
10 contributions toward such coverage, the termination of the other plan's  
11 coverage, death of a spouse, or divorce or legal separation; and

12 (D) requests enrollment within 63 days after the termination of  
13 coverage under another employer health benefit plan; or

14 (2) the individual is employed by an employer who offers multiple  
15 health benefit plans and the individual elects a different health benefit plan  
16 during an open enrollment period; or

17 (3) a court has ordered coverage to be provided for a spouse or minor  
18 child under a covered employee's plan.

19 (r) "New business premium rate" means, for each class of business as  
20 to a rating period, the lowest premium rate charged or offered, or which  
21 could have been charged or offered, by the small employer carrier to small  
22 employers with similar case characteristics for newly issued health benefit  
23 plans with the same or similar coverage.

24 (s) "Preexisting conditions exclusion" means a policy provision  
25 which excludes or limits coverage for charges or expenses incurred during  
26 a specified period not to exceed 90 days following the insured's effective  
27 date of enrollment as to a condition, whether physical or mental, regardless  
28 of the cause of the condition for which medical advice, diagnosis, care or  
29 treatment was recommended or received in the six months immediately  
30 preceding the effective date of enrollment.

31 (t) "Premium" means moneys paid by a small employer or eligible  
32 employees or both as a condition of receiving coverage from a small  
33 employer carrier, including any fees or other contributions associated with  
34 the health benefit plan.

35 (u) "Rating period" means the calendar period for which premium  
36 rates established by a small employer carrier are assumed to be in effect  
37 but any period of less than one year shall be considered as a full year.

38 (v) "Waiting period" means a period of time after full-time  
39 employment begins before an employee is first eligible to enroll in any  
40 applicable health benefit plan offered by the small employer.

41 (w) "Small employer" means any person, firm, corporation, or  
42 partnership ~~or association~~ eligible for group sickness and accident  
43 insurance pursuant to ~~subsection (a) of~~ K.S.A. 40-2209, and amendments

1 thereto, actively engaged in business whose total employed work force  
2 consisted of, on at least 50% of its working days during the preceding year,  
3 of at least two and no more than 50 eligible employees, the majority of  
4 whom were employed within the state. In determining the number of  
5 eligible employees, companies—~~which~~ *that* are affiliated companies or  
6 ~~which~~ *that* are eligible to file a combined tax return for purposes of state  
7 taxation; shall be considered one employer. Except as otherwise  
8 specifically provided, *the provisions of this act which the small employer*  
9 *health insurance availability act* apply to a small employer—~~which~~ *that* has  
10 a health benefit plan shall continue to apply until the plan anniversary  
11 following the date the employer no longer meets the requirements of this  
12 definition.

13 (x) "Affiliate" or "affiliated" means an entity or person who directly  
14 or indirectly through one or more intermediaries, controls or is controlled  
15 by, or is under common control with, a specified entity or person.

16 (y) "*Association health plan*" or "*AHP*" means a group health plan  
17 issued by a bona fide group or association of employers established  
18 pursuant to section 3(g) of the employee income retirement security act of  
19 1974 (ERISA).

20 Sec. 3. K.S.A. 40-2209b and K.S.A. 2018 Supp. 40-2209d are hereby  
21 repealed.

22 Sec. 4. This act shall take effect and be in force on and after April 1,  
23 2019, and its publication in the Kansas Register.