

**State of Kansas**  
**Insurance Department**  
**Notice of Public Hearing on Proposed Administrative Regulations**  
**September 7, 2023**

The Kansas Insurance Department will conduct a public hearing on Thursday, September 7, 2023, at 8:30 a.m. at the Kansas Insurance Department, 1300 SW Arrowhead Road, Topeka, Kansas, to consider the proposed revocations of K.A.R. 40-2-14a and 40-3-12; and the proposed amendment of K.A.R. 40-3-13. Anyone desiring to participate via teleconference or virtual format should visit the Insurance Department's website <https://insurance.kansas.gov/legal-issues/> for information on registering.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Kansas Insurance Department, 1300 SW Arrowhead Road, Topeka, Kansas 66604 or by email to [KID.publiccomment@ks.gov](mailto:KID.publiccomment@ks.gov). All interested parties will be given a reasonable opportunity to present their views orally regarding the proposed revocations and the proposed amended regulation during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five (5) minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation, proposed revocations, and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Bobbi Mariani at (785) 296-7802 or [bobbi.mariani@ks.gov](mailto:bobbi.mariani@ks.gov) or the Kansas Relay Center at 1-800-766-3777. The west entrance to the Insurance Department is accessible. Handicapped parking is located on the west side of the Insurance Department.

Copies of the proposed amended regulation, proposed revocations, and the Economic Impact Statements can be viewed at the following website: <https://insurance.kansas.gov/legal-issues/>.

Summaries of the proposed amendment and proposed revocations and their economic impact follow. (Note: Statements indicating that a regulation or revocation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Insurance Department, other state agencies, state employees, or the general public has been identified.)

**K.A.R. 40-2-14a – Life insurance and annuities; recommendation standards.** The proposed revocation of K.A.R. 40-2-14a corresponds with the adoption of K.A.R. 40-1-53 by the Insurance Department. K.A.R. 40-1-53 adopts the Department's "Policy and Procedure Regarding Suitability in Annuity Transactions," dated January 10, 2023. The policy and procedure is an adaptation of the National Association of Insurance Commissioners model regulation #275 pertaining to suitability in annuity transactions and replaces the 2012 Department policy and procedure adopted in K.A.R. 40-2-14a. The implementation of K.A.R. 40-1-53 makes the revocation of this regulation necessary. The Insurance Department does not anticipate any

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significant economic impact to this agency, other governmental agencies, or to the public as a result of the revocation of this regulation.

**K.A.R. 40-3-12 – Fire and casualty insurance companies; rating plans; requirements.** The proposed revocation of K.A.R. 40-3-12 removes an inconsistency in the application of allowable risk modification rates between K.S.A. 40-954 and K.S.A. 40-955b caused by the existing regulation, which mandated a credit/debit limit of 25% not otherwise found in statute and did not address the provisions of K.S.A. 40-955b. The Insurance Department does not anticipate any significant economic impact to this agency, other governmental agencies, or to the public as a result of the revocation of this regulation.

**K.A.R. 40-3-13 – Fire and casualty insurance companies; rating plans; duplication prohibited.** The proposed amendment removes a reference to proposed revoked K.A.R. 40-3-12. K.S.A. 40-954 and K.S.A. 40-955b are also added to the implementing section in the regulation's history. The Insurance Department does not anticipate any significant economic impact to this agency, other governmental agencies, or to the public as a result of the amendment of this regulation.

Vicki Schmidt  
Insurance Commissioner

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**40-2-14a. This regulation shall be revoked on and after January 1, 2024.** (Authorized by K.S.A. 40-103, K.S.A. 2012 Supp. 40-4916, and K.S.A. 40-2404a; implementing K.S.A. 2012 Supp. 40-222, K.S.A. 40-2403, K.S.A. 2012 Supp. 40-2404, K.S.A. 40-2407, and K.S.A. 2012 Supp. 40-4916; effective May 20, 2005; amended Dec. 2, 2005; amended June 1, 2013; revoked P-\_\_\_\_\_.)

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**40-3-12.** (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-954; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended March 10, 2006; revoked P-\_\_\_\_\_.)

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**40-3-13. Fire and casualty insurance companies; rating plans; duplication prohibited.** Risk modification, ~~as described in K.A.R. 40-3-12,~~ shall not be applied to duplicate factors already fully recognized in the otherwise applicable rate. (Authorized by K.S.A. 40-103 and 40-961; implementing K.S.A. 40-954, 40-955, 40-955b; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1986; amended Sept. 16, 2005; amended P-\_\_\_\_\_.)

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## Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Insurance Department  
Agency

Philip Michael  
Agency Contact

785-296-7809  
Contact Phone Number

40-2-14a  
K.A.R. Number(s)

☒ Permanent    ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes    If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No    If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes    If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No    If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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## Section I

Brief description of the proposed rule(s) and regulation(s).

The proposed revocation of K.A.R. 40-2-14a corresponds with the proposed adoption of K.A.R. 40-1-53. K.A.R. 40-1-53 adopts the Department's "Policy and Procedure Regarding Suitability in Annuity Transactions," dated January 10, 2023. The policy and procedure is an adaptation of the National Association of Insurance Commissioners ("NAIC") model regulation #275 pertaining to suitability in annuity transactions and replaces the 2012 Department policy adopted in K.A.R. 40-2-14a. The implementation of K.A.R. 40-1-53 makes the revocation of this regulation necessary.

## Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The revocation is not mandated by federal law. However, pursuant to section 989J of the Dodd-Frank Act, states are effectively required to adopt revised versions of the NAIC model regulation within 5 years of NAIC adoption or potentially lose oversight to the Federal government. The NAIC revised model regulation #275 was adopted in 2020. Adoption of K.A.R. 40-1-53 and, therefore, revocation of this regulation, is necessary to ensure continued state regulation of annuities. Some contiguous states have adopted a regulation or enacted statutes similar to proposed K.A.R. 40-1-53.

## Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The revocation ensures continued State governance of annuities.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The revocation will have no economic effect on insurers as the revocation allows continued state governance.

The regulation will have no effect on other business sectors, public utility ratepayers, individuals, or local governments.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Insurance companies that sell annuities and their distribution partners, i.e., insurance producers.

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D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The proposed revocation allows implementation of K.A.R. 40-1-53 and continued State governance of annuities. The revocation will result in minimal compliance costs.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

N/A

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

*Note: Do not account for any actual or estimated cost savings that may be realized.*

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

**Total Annual Costs – \$0**

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Regulation governing annuity suitability has been in place in Kansas for many years. Revocation of this regulation coincides with a new regulation and policy and procedure that will maintain regulation of annuity suitability in Kansas.

- ☐ Yes      If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

N/A

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

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N/A

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Model regulation #275 was developed through the NAIC, a national organization that utilizes lengthy deliberative processes including public comment periods, before adopting model regulations for states to adopt for accreditation. Industry participants were given a preview of the policy and procedure document and indicated their assent. The majority of states have implemented or are in the process of implementing regulations or statutes to adopt state-specific versions of this model regulation. This proposed revocation simply clears the way for the new policy adopted in K.A.R. 40-1-53.

## Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.  
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

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D. Provide a detailed statement of the data and methodology used in estimating the costs used.

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## Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Insurance Department  
Agency

Philip Michael  
Agency Contact

785-296-7809  
Contact Phone Number

40-3-12, 40-3-13  
K.A.R. Number(s)

☒ Permanent    ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes    If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No    If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes    If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No    If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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## Section I

Brief description of the proposed rule(s) and regulation(s).

K.S.A. 40-954 establishes determining factors and the classification and of risks in fire and casualty insurance and allows risk modification with written application to the Commissioner. K.S.A. 40-955b allows premium risk modification credits/debits in amounts up to 40% for certain types of commercial lines of insurance without written application to the Commissioner of Insurance.

The proposed revocation of K.A.R. 40-3-12 removes an inconsistency in the application of allowable risk modification rates between K.S.A. 40-954 and K.S.A. 40-955b caused by the regulation, which mandated a credit/debit limit of 25% and did not address K.S.A. 40-955b. The language of the statutes adequately address risk modification and this regulation, last amended in 2005 before the current versions of either statute became effective, is unnecessary and relies on statutory language no longer in effect.

K.A.R. 40-3-13 prohibits the application of risk modification to duplicate factors and is amended only to remove reference to the proposed revoked K.A.R. 40-3-12. K.S.A. 40-954 and K.S.A. 40-955b are added to the implementing section of the history.

## Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The revocation and amendment are not mandated by federal law. Contiguous states' regulations vary in language from set percentage limitation to general statements. Colorado limits rate modification to 25% in 3 Colo. Code Regs. § 702-5:5-1-11. Missouri addresses rate modification in amounts generally not to exceed 25% in Mo. Code Regs. Ann. tit. 20, § 500-4.100. Nebraska addresses rate modification in Neb. Rev. Stat. Ann. § 44-7510 and does not specify a certain credit/debit limitation. Oklahoma addresses rate modification in Okla. Stat. Ann. tit. 36, § 985 and Okla. Admin. Code 365:15-7-22 and does not specify a certain credit/debit limitation.

## Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The revocation and amendment will enhance business activities by removing an inconsistency in application of Kansas law making risk modification limitation uniform for insurance companies conducting business in Kansas.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The revocation and amendment will have minimal economic effect on insurers as the revocation does not remove or add to any existing statutory requirements/limitations.

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The regulation will have no effect on other business sectors, public utility ratepayers, individuals or local governments.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);  
Insurance companies and their distribution partners, i.e., insurance producers. The revocation and amendment are intended to remove an inconsistency between statute and regulation.
- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;  
The benefits of the revocation and amendment are a more uniform application of risk modification rates and review. The revocation and amendment will result in minimal compliance costs.
- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;  
N/A
- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.  
*Note: Do not account for any actual or estimated cost savings that may be realized.*

Costs to Affected Businesses – \$\$0

Costs to Local Governmental Units – \$\$0

Costs to Members of the Public – \$\$0

**Total Annual Costs – \$\$0**  
(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Statutes governing premium risk modification are in place and have been for a number of years. This revocation simply removes an inconsistency created by K.A.R. 40-3-12. The amendment to K.A.R. 40-3-13 is necessary to remove reference to the proposed revocation.

- ☐ Yes     If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

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Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

N/A

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

N/A

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The revocation is proposed based on industry confusion about the application of individual risk modification rates to individual premium rating plans caused by language found in K.A.R. 40-3-12 for companies submitting risk modifications to the Insurance Department. The specific limitation found only in K.A.R. 40-3-12 created a potential conflict between the application of K.S.A. 40-954 and K.S.A. 40-955b.

## Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.  
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

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- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

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- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

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