

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2352**

As Agreed to May 20, 2015

Brief*

HB 2352 would make several amendments to the Insurance Code. Among the amendments, the bill would make changes to the definitions of “large employer” and “small employer” in the law requiring insurance coverage for Autism Spectrum Disorders (ASD); update provisions associated with the mailing of notice of termination of certain insurance coverage and financial examinations of certain insurance companies; repeal 2011 law authorizing the state to join the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT); and simplify the calculation of gross premiums for surplus lines insurance.

ASD Coverage—Amendments to 2014 Law (Section 1)

Specifically, the bill would amend “large employer” to increase the number of employees from at least 51 to at least 101 employees. The limit on the number of employees of a “small employer” would be changed from the current limit of 50 to a limit of 100 employees. (“Small” and “large” employers are terms used in connection with group health benefit plans and the ASD coverage requirement.)

**Mailing Notice of Termination of Insurance Coverage
(Section 2)**

The bill would amend a provision in the Kansas Automobile Injury Reparations Act to provide insurance

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companies the option to mail notice of motor vehicle liability insurance termination by any other mail tracking method currently used, approved, or accepted by the United States Postal Service (USPS).

Under current law, automobile liability insurance companies are prohibited from terminating policies or renewals, except in the instance of nonpayment or at the request from the policyholder, until at least 30 days after mailing a notice of termination by certified or registered mail, or USPS certificate of mailing. The bill would expand the options associated with providing notice of termination.

**Financial Examinations of Certain Insurance Companies
and the Kansas Uninsurable Health Insurance Plan
(Sections 3-4)**

The bill would amend provisions in the Insurance Code pertaining to permissible fees and expenses associated with certain financial examinations and the frequency rate of a financial examination of the plan administrator for the Kansas Uninsurable Health Insurance Plan Act (an act governing the State High Risk Pool).

Outside Consulting Fees and Expenses

The bill would increase for certain insurance companies, from \$100,000 to \$500,000, the maximum amount allowed for the collective total of payment of outside consulting and data processing fees associated with the financial examination of an insurance company or society or its subsidiaries and the *pro rata* amount to fund the purchase of examination equipment and computer software. Those companies subject to this consulting fee and equipment purchase limitation are those with \$200 million or more in gross premiums, both direct and assumed, in the prior calendar year.

***Kansas Uninsurable Health Insurance Plan Act—
Amendments***

The bill would amend the Kansas Uninsurable Health Insurance Plan Act to decrease the frequency of the required examination period of the financial status of the Plan, from at least once every three years to at least once every five years. By law, the Insurance Commissioner (Commissioner) is required to transmit a copy of these examination results to the Legislature by February 1 of the year following the year in which the examination occurred.

Surplus Lines Insurance; Surplus Lines Insurance Multi-State Compliance Compact (New Section 5, Section 6, New Sections 7-8)

The bill would create new definitions and amend existing requirements in the Insurance Code pertaining to the regulation of excess lines insurance (also referred to by the term “surplus lines insurance”). Additionally, the bill would repeal SLIMPACT. The State of Kansas became a member of the Compact *via* the enactment of 2011 HB 2076.

Definitions

The bill would create new definitions to be applicable to provisions in the Insurance Code relating to the regulation of excess lines insurance coverage. Among the defined terms are:

- Exempt commercial purchaser – any person purchasing commercial insurance that, at the time of placement, meets the following requirements: employs or retains a qualified risk manager to negotiate insurance coverage; has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and this person:

- Possesses a net worth in excess of \$20,040,000, except that this amount would be adjusted every five years by rules and regulations of the Commissioner to account for the percentage change in the Consumer Price Index;
 - Generates annual revenues in excess of \$55,100,000 (this amount also would be adjusted every five years as detailed above);
 - Employs more than 500 full-time or full-time-equivalent employees per insured entity or is a member of an affiliated group employing more than 1,000 employees in the aggregate;
 - Is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$33,060,000 (this amount also would be adjusted every five years as previously detailed); or
 - Is a municipality with a population in excess of 50,000 persons;
- Home state – as the term applies to an insured:
 - The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or
 - If 100 percent of the insured risk is located out of the state (its principal place of business), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated;
- Non-admitted insurer – an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state (this term would not include a risk retention group, as defined in 15 USC § 3901(a)(4)); and

- Surplus lines insurance – insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state. The term also would mean excess lines insurance as may be defined by applicable state law.

***Gross Premiums for Surplus Lines Insurance—
Calculation of Payment to Commissioner***

The bill would simplify the computation method of surplus lines premium provided in current law by instead specifying licensed agents must collect and pay to the Commissioner a tax of 6.0 percent on the total gross premiums charged, less any return premiums, for surplus lines insurance transacted by the licensee pursuant to the license for insureds whose home state is Kansas. (The calculation in current law recognizes multi-state premiums and separately accounts for a tax rate of 6.0 percent for Kansas' risks and exposures and a remittance, for risks located outside of the state, equal to the tax rate and fees assessed in other states and jurisdictions.)

***Signed Affidavit or Statement of Diligent Search—
Exempt Commercial Producer***

The bill would exempt a surplus lines producer seeking to place non-admitted insurance for an exempt commercial purchaser from filing a sworn affidavit or statement with the Kansas Insurance Department (Department), if the surplus lines producer has disclosed to the exempt commercial producer that such insurance may or may not be available from the admitted market and the exempt commercial producer has subsequently requested in writing the surplus lines producer procure or place such insurance from a non-admitted insurer.

Under current law, a statement must be filed annually and specify that, after diligent effort, the agent has been unable to secure the amount of insurance required to protect the property, person, or firm described in the agent's affidavit or statement from loss or damage in regularly admitted companies.

Rules and Regulations Authority—Insurance Commissioner

The bill also would permit the Commissioner to adopt rules and regulations as are reasonable, necessary, and incidental to the enforcement and administration of the provisions governing excess lines insurance. Any such rules and regulations must be adopted no later than January 1, 2017.

Effective Dates

The changes relating to ASD coverage would take effect and be in force from and after January 1, 2016, and its publication in the statute book. The changes to law and new law governing surplus lines insurance would be effective on and after January 1, 2016. All other provisions of the bill would be effective on July 1, 2015.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to HB 2352, with one exception. The Conference Committee agreed to delete a Senate Committee amendment modifying a reference to grandfathered individual or group health insurance policy. The Conference Committee further agreed to insert provisions relating to:

- Mailing termination of insurance coverage notice (SB 54, as further amended by Senate Committee on Financial Institutions and Insurance);

- Outside consulting fees and certain financial examinations and examinations associated with the State High Risk Pool (SB 55, as amended by Senate Committee on Financial Institutions and Insurance); and
- SLIMPACT and home state tax authority for surplus lines insurance (Sub. for SB 155, as recommended by Senate Committee on Financial Institutions and Insurance).

The Conference Committee modified Sub. for SB 155 to delete content associated with two bills that had been incorporated in the substitute bill (SB 144 and 145) and further modified the bill to specify an effective date for its provisions (January 1, 2016) and to authorize the Commissioner to adopt rules and regulations. (The authorization for rules and regulations' authority, absent adoption by a date certain, had been contained in SB 155, as introduced, but was not included in Sub. for SB 155.)

Background

The Senate Committee on Financial Institutions and Insurance removed the contents of HB 2352, which as introduced would have amended the Kansas Banking Code to permit banks to operate interactive teller machines [those contents had been separately included in 2015 SB 240 and 2015 HB 2216; SB 240 and HB 2216 have been approved by the Governor]. The Senate Committee inserted the contents of SB 303, as amended by the Senate Committee, into HB 2352.

SB 303

The bill was introduced by the Senate Ways and Means Committee at the request of Senator Denning. At the bill hearing before the Senate Committee on Financial

Institutions and Insurance, a representative of the Department provided informational remarks on the subject of the bill. The representative indicated the topic of the bill has been discussed with insurers as forms were being submitted for the next health plan year. Concerns were expressed regarding the definition of “small employer” established in the federal Affordable Care Act (ACA) and effective January 1, 2016, and the 2014 state law (HB 2744) definition of “large employer.” Further, in order to comply with ACA essential health benefits requirements, the representative indicated a state law could not provide separate coverage limitations for groups of 1-50 and groups of 51 or greater; if no changes are made to the 2014 law, Kansas would incur a liability since the language does not conform to federal law. (Written remarks provided by the Department following the Senate Committee hearing on SB 303 stated it is estimated 30 children are receiving services in the 51-100 employer subgroup.) The representative offered an amendment to update the two employer definitions, effective January 1, 2016, for consideration. No others provided testimony on the bill.

The Senate Committee amendment deleted reference to an exemption contained in the bill from ASD coverage requirements for qualified health plans, as defined in the federal Patient Protection and Affordable Care Act (one of two acts known collectively as the ACA). The Senate Committee amendment also modified a reference to grandfathered individual or group health insurance policies and modified the definitions of “large employer” and “small employer.” The changes to the definitions would be effective on and after January 1, 2016. The amendment was submitted by Senator Denning, in consultation with Blue Cross and Blue Shield of Kansas City and other parties.

The fiscal note prepared by the Division of the Budget on SB 303, as introduced, states the Department indicates the State would face some liability for this coverage if the bill is not enacted. It is not, however, possible at the time to make an exact fiscal estimate because of the many variables that would affect the liability.

SB 54

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of Farmers Insurance. In the Senate Committee, a representative of Farmers Insurance testified in support of the bill, stating the bill, as introduced, would add a more technologically advanced tracking method available through the USPS to use for mailings. A representative of American Family Insurance provided written proponent testimony. There was no neutral or opposition testimony at the bill hearing.

On February 3, 2015, the Senate Committee amended the bill to delete reference to a specified tracking method, the Intelligent Mail Barcode (IMB) tracking method. The Senate Committee also inserted a provision allowing for tracking methods approved or accepted by the USPS in the future.

On February 16, 2015, the Senate Committee further amended the bill to rescind language from its previous amendment relating to the tracking methods approved or accepted by the USPS in the future.

According to the fiscal note prepared by the Division of the Budget, in consultation with the Department, SB 54, as introduced, would have no fiscal effect on agency operations. The Department indicates insurance companies are required to prove a notice of termination was mailed while the method of tracking known as IMB only provides evidence of the date of delivery and would not be a substitute for certified mailing.

SB 55

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department.

In the Senate Committee, a representative of the Department indicated the statutory cap on financial

examinations is inadequate, stating the Department's long-term ability to hire and retain qualified financial examiners with the expertise to conduct full-scope financial condition exams is at risk because the Department is limited in its ability to compete with private consulting firms in hiring qualified examiners. The representative indicated the change in frequency for the examination of the financial examination of the Uninsurable Health Insurance Plan was appropriate as the Plan was terminated on December 31, 2013, and has been in run-off since that date. The Plan will continue to have independent audits, which are submitted to the Department. There was no neutral or opponent testimony at the bill hearing.

The Senate Committee amendment removes a date in the Kansas Uninsurable Health Insurance Plan Act originally associated with the financial examination requirement.

The fiscal note prepared by the Division of the Budget indicates SB 55 would have no fiscal effect. However, the bill would allow additional expenditures for insurance companies and societies for outside consulting and data processing fees. Testimony before the Senate Committee indicated 10 of the 46 domestic insurance companies would be subject to the increased statutory cap of \$500,000 (gross premiums exceeding the established threshold).

Sub. for SB 155

The Senate Committee on Financial Institutions and Insurance recommended the adoption of a substitute bill. The substitute bill incorporates provisions of three bills relating to surplus lines insurance: SB 155 (amended by the Senate Committee), SB 144, and SB 145. The Senate Committee amendments to SB 155 include updates to the definitions of "non-admitted insurer" and "surplus lines insurance"; deletion of two statutes relating to the implementation of SLIMPACT; and removal of a new provision that would have allowed the Commissioner to adopt rules and regulations for the

enforcement and administration of excess lines insurance law. Technical amendments also were made to the substitute bill.

Senate bills 144, 145, and 155 were introduced by the Senate Committee at the request of the National Association of Professional Surplus Lines Offices (NAPSLO). A representative of NAPSLO testified as the only proponent at the bill hearings. The testimony generally indicated support for the repeal of SLIMPACT, as this compact has not become operational and the solution that has emerged is to implement home state taxation based on the home state's tax rate. This approach, the representative stated, would simplify and reduce the regulatory burden for surplus lines brokers and also would simplify the process for state regulators. Testimony on SB 144 (diligent search affidavits) and SB 145 (insurer eligibility; voluntary list for insurers) also indicated the bills would modernize and simplify the regulatory process for regulators, the industry, and insureds.

A revised fiscal note for SB 155 (contents of the original bill only) was issued after the action of the Senate Committee. The revised note stated the Department provided updated information, indicating enactment of SB 155 would reduce revenues from insurance premium taxes of approximately \$611,000, which would reduce revenues to the State General Fund by the same amount. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*. (The previous fiscal note indicated the bill would not change insurance tax amounts collected for surplus lines insurance and would have no fiscal effect.)

Insurance; Autism Spectrum Disorder; employers; Kansas Automobile Injury Reparations Act; financial examinations; State High Risk Pool; surplus lines; SLIMPACT

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