

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2480**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Senate Sub. for HB 2480 would make several amendments to and enact new law supplemental to the Insurance Code and would amend law governing the appointment of the Securities Commissioner by the Commissioner of Insurance (Commissioner). Among these changes, the bill would:

- Create law and amend law to allow a reciprocal to convert to a Kansas mutual insurance company in accordance with terms of a conversion plan filed with and approved by the Commissioner (New Section 1; Sections 4-5);
- Amend provisions governing excess lines coverage and taxation to change a requirement that the Commissioner collect double the amount of tax as a penalty from any licensee or individual who fails, refuses, or neglects to transmit the required affidavit or statement for surplus line insurance or fails to pay the imposed tax for surplus line insurance (Section 2);
- Amend the effective date specified for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC) for property and casualty

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

companies and for life insurance companies (Section 3);

- Amend provisions of the Long-term Care (LTC) Insurance Act to modify a definition to allow regulation of LCT policies providing coverage for less than 12 months (Section 6);
- Amend provisions governing agent licensing and renewal licensure requirements in the Uniform Agents Licensing Act and in the Public Adjusters Licensing Act (Sections 7-14); and
- Amend law governing the Office of the Securities Commissioner and the appointment and removal authority assigned to the Commissioner of Insurance (Section 15).

The bill also would make technical changes.

Reciprocals and Conversion to Mutual Insurance Companies (New Section 1; Sections 4-5)

The bill would create law and amend law in the Insurance Code to allow a reciprocal to convert to a Kansas mutual insurance company in accordance with terms of a conversion plan filed with and approved by the Commissioner. A reciprocal, as defined in KSA 40-1623, is an aggregation of subscribers under a common name.

The bill would permit the Commissioner to establish reasonable requirements and procedures for the submission and approval of a conversion plan. The bill would outline those items that must be included in the conversion plan:

- A provision for converting the existing subscriber interests in the reciprocal into policyholder interests in the resulting mutual insurance company, so that each policyholder's interest in the mutual insurance company is fairly proportionate to such subscriber's interest in the reciprocal;

- A provision amending the existing subscriber's agreement to articles of incorporation that comply with provisions in the Insurance Code governing the authority for formation, votes of members, and charter filing requirements for mutual insurance companies;
- A proposed copy of the articles of incorporation;
- Proof of the approval or adoption of the conversion plan by not less than two-thirds of the subscriber interests entitled to vote;
- A transition plan for the change of governance of the reciprocal from an attorney-in-fact to a board of directors and officers that is governed by Kansas law applicable to mutual insurance companies; and
- Any other information required by the Commissioner.

The bill would provide the Commissioner shall approve the conversion plan if the Commissioner finds that the proposed conversion will not:

- Be detrimental to the interests of the reciprocal's subscribers;
- Be detrimental to the interests of the state of Kansas; and
- Render the insurer incapable of fulfilling its contractual obligations.

Upon the approval of a conversion plan, the Commissioner would be required to issue a new or amended certificate of authority, which would be deemed the final act of conversion; at such time, the reciprocal concurrently would become a mutual insurance company.

Mutual insurance companies created under the provisions of this bill would be required to comply with all statutes in the Insurance Code, including Articles 12 and 40, that are applicable to mutual insurance companies.

The bill would amend law, which currently allows a mutual insurance company opting to convert to a reciprocal to request a hearing, within 15 days of the Commissioner's approval or denial of the conversion plan, under the Kansas Administrative Procedure Act. The bill would grant this same ability to a reciprocal seeking to convert to a mutual insurance company.

Finally, the law created in the bill would be made supplemental to Article 16 in Chapter 40 (Insurance Code), which governs reciprocals or interinsurance contracts.

Excess Lines Coverage (Section 2)

The bill would amend provisions in the Insurance Code governing excess lines coverage and taxation to change a requirement that the Commissioner collect double the amount of tax as a penalty from any licensee or individual who fails, refuses, or neglects to transmit the required affidavit or statement for surplus line insurance or fails to pay the imposed tax for surplus line insurance. The bill would assign the Commissioner permissive authority to collect the penalty up to double the amount of the tax.

Risk-based Capital (RBC) Instructions (Section 3)

The bill would amend the effective date specified in the Insurance Code for the RBC instructions promulgated by the NAIC for property and casualty companies and for life insurance companies. The instructions currently specified became effective December 31, 2018. The bill would update the effective date on the RBC instructions to December 31, 2019.

***Long-term Care Insurance Act—Duration of Policies
(Section 6)***

The bill would amend provisions of the LTC Insurance Act to modify the definition of “long-term care insurance” and to allow the Kansas Insurance Department (Department) to regulate LTC policies that provide coverage for less than 12 months. Current law requires LTC policies to have a duration of at least 12 consecutive months.

Agent and Public Adjuster Licensure; Appointment of Agents (Sections 7-14)

The bill would amend provisions governing agent licensing and renewal licensure requirements in the Uniform Insurance Agents Licensing Act and in the Public Adjusters Licensing Act.

Uniform Insurance Agents Licensing Act (Sections 7-12)

Definitions (Section 7)

The bill would modify the definition of “biennial due date” as the term applies to both agents (the last day of the agent’s birth month) and to registered businesses (the last day of the month of the business’ initial licensure).

Biennial Renewal Fee and Continuing Education Requirements for Licensure (Section 8)

In addition to the current criteria specified for residential agents to meet educational requirements in the biennial license period, the bill would require agents to submit an application for renewal on a form prescribed by the Commissioner and, on and after January 1, 2022, to pay a \$4.00 biennial renewal application fee.

Under current law, licensed agents holding only a property and casualty (P&C) or life, accident, and health (L&H) qualification are required to obtain biennially a minimum of 12 continuing education credits (CECs), including at least 1 hour in insurance ethics and no more than 3 CECs in insurance agency management. If an agent holds both the P&C and L&H certifications, the agent is required to obtain a minimum of 24 CECs biennially.

On and after January 1, 2022, the bill would increase the minimum CEC requirement for agents holding only 1 certification from 12 to 24 CECs biennially, permit at least 3 hours of instruction in ethics, and remove the required insurance agency management hours. [*Note:* Agents holding both P&C and L&H certifications would continue to be required to obtain 24 CECs biennially.]

The bill would update the CEC requirements for specified lines of insurance to add exemptions for insurance agents licensed to hold only a qualification in either self-service storage unit or travel insurance. [*Note:* Agents licensed and holding only 1 or more of these qualifications are exempted from the requirement for a minimum of 12 or 24 CECs under continuing law.]

Appointment of Agents; Notification (Section 9, Section 11)

Appointment of agents. The bill would remove affiliation requirements for business entities (insurance companies). Under current law, each officer, director, partner, and employee of the business entity who acts as an insurance agent must be licensed as an insurance agent. The business entity is required to disclose to the Department all of its officers, directors, partners, and employees, regardless of whether such persons are licensed as insurance agents. The current notification requirement and licensure of the business entity's representatives includes an associated time frame for notification to the Department and penalties for failure to notify. The bill would remove the notification time frames and penalties.

The bill would, on and after January 1, 2021, also remove a required annual certification and related certification fee for a licensed insurance agent who is an officer, director, partner, or employee of, or is otherwise legally associated with, a corporation, association, partnership, or other legal entity appointed by an insurance company. Under current law, an annual certification fee must be paid for each licensed agent certified by the company at the time the company files its premium tax returns.

Notification. The bill would create reporting requirements on each person or entity licensed in the state as an insurance agent. The bill would require the following information to be reported to the Commissioner within 30 days of an occurrence:

- Each disciplinary action on the agent's license or licenses by the regulatory agency of another state or territory of the United States;
- Each disciplinary action on an occupational license held by the licensee, other than an insurance agent's license;

- Each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit or misrepresentation, or a violation of any insurance law;
- All details of any conviction of a misdemeanor or felony (The types of details are specified in the bill; minor traffic violations could be omitted.);
- Each change in name (if the change is effected by court order, the bill would require a copy of such order to be provided to the Commissioner);
- Each change in residence or mailing address, email address, or telephone number;
- Each change in the name or address of the agency with which the agent is associated; and
- Each termination of a business relationship with an insurer if the termination is for cause, including the reason for the termination.

In addition, each person or entity licensed in Kansas as an insurance agent would be required to provide to the Commissioner, upon request, a current listing of company affiliations and affiliated insurance agents. Business entities licensed in Kansas as insurance agents would be required to report each change in legal or mailing address, email address, and telephone number to the Commissioner within 30 days of occurrence. These entities would also be required to report each change in the name and address of the licensed agent who is responsible for the business entity's compliance with the insurance laws of Kansas to the Commissioner within 30 days of occurrence.

Commissioner—Licenses and Renewals; Permissible Considerations (Section 10)

Under continuing law, the Commissioner is permitted to deny, suspend, revoke, or refuse renewal of licenses if the Commissioner finds violation of several listed actions of the applicant or license holder (e.g., providing incorrect, misleading, incomplete, or untrue information; violations of insurance law; been convicted of a misdemeanor or felony). The bill would add “failed to respond to an inquiry from the Commissioner within 15 business days” to this list of actions.

In addition, the bill would require the Commissioner to consider the following criteria when determining whether to grant or renew a license:

- Applicant’s age at the time of the conduct;
- Recency of the conduct;
- Reliability of the information concerning the conduct;
- Seriousness of the conduct;
- Factors underlying the conduct;
- Cumulative effect of the conduct or information;
- Evidence of rehabilitation;
- Applicant’s social contributions since the conduct;
- Applicant’s candor in the application process; and
- Materiality of any omissions or misrepresentations.

Separately, the Commissioner would be required to consider the following factors when determining whether to reinstate or grant to an applicant a license that has been revoked:

- Present moral fitness of the applicant;
- Demonstrated consciousness by the applicant of the wrongful conduct and disrepute that the conduct has brought to the insurance profession;
- Extent of the applicant's rehabilitation;
- Seriousness of the original conduct;
- Applicant's conduct subsequent to discipline;
- Amount of time that has elapsed since the original discipline;
- Applicant's character, maturity, and experience at the time of the revocation; and
- Applicant's present competence and skills in the insurance industry.

The bill would provide that an applicant to whom a license has been denied after a hearing could not apply for a license again until after the expiration of a period of one year from the date of the Commissioner's order or such other time as prescribed in the order. A licensee whose license was revoked could not reapply until after five years from the date of the order or such period of time as prescribed in the order or revocation.

Renewal Application—Penalties (Section 12)

The bill would amend provisions applying to the renewal of licensure for an insurance agent to create corresponding penalty provisions when the required renewal application is not received by the Commissioner by the agent's biennial due date. The bill would provide, if the required renewal application is late:

- Such individual insurance agent's qualification and each corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the agent satisfactorily submits a completed application, whichever occurs first; and
- The Commissioner shall assess a penalty of \$100 for each licensed suspended:
 - If such agent fails to provide the required renewal application and the monetary penalty within 90 calendar days of the biennial due date, the agent's qualification and each corresponding license would expire on such agent's biennial due date;
 - If, after more than 3 but less than 12 months from the date the license expired, the agent desires to reinstate his or her license, the agent must provide the required renewal application and pay a reinstatement fee in the amount of \$100 for each license suspended; and
 - If, after more than 12 months have passed since license expiration, the agent desires to reinstate the license, this agent would be required to apply for an insurance agent's license, provide the required proof of CEC completion, and pay a reinstatement fee in the amount of \$100 for each license suspended.

The bill would permit, upon receipt of a written application from an agent claiming extreme hardship, the Commissioner to waive any penalty associated with renewal of an agent's license.

Public Adjusters Licensing Act (Sections 13-14)

The bill would amend the Public Adjusters Licensing Act to add fingerprinting and criminal history record checks of applicants. Under the bill, the Commissioner would be allowed to:

- Require a person applying for a public adjuster license to be fingerprinted and submit to a state and national criminal history record check or to submit a background check, or both:
 - The bill would require fingerprints to be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The Commissioner would be required to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national history record check. Local and state law enforcement officers and agencies would be required to assist the Commissioner in the taking and processing of fingerprints of applicants and to release all records of an applicant's arrests and convictions to the Commissioner; and
- Conduct or have a third party conduct a background check on a person applying for a public adjuster license.

The bill would provide, whenever the Commissioner requires fingerprinting or a background check, or both, any associated costs would be paid by the applicant. The Commissioner would be permitted to use the information obtained from a background check, fingerprinting, and the applicant's criminal history only for purposes of verifying the identity of the applicant and in the official determination of the applicant's fitness to be issued a license as a public adjuster.

The bill would also amend the biennial renewal provisions for licensure to clarify the term “biennial due date” and increase, from 12 to 24 hours, the biennial minimum continuing education courses for public adjuster licensees and to specify such education include 3 hours of ethics. The bill would remove a requirement that such education include 11 hours of P&C or general continuing education courses.

***Appointment and Removal of the Securities
Commissioner (Section 15)***

The bill would amend law governing the Office of the Securities Commissioner and the appointment and removal authority assigned to the Commissioner of Insurance.

Under current law, the Insurance Commissioner is permitted to remove the Securities Commissioner for official misconduct. The bill would remove this authority and would instead require the Securities Commissioner to serve at the pleasure of the Insurance Commissioner. Under continuing law, the Securities Commissioner would be subject to the confirmation of the Senate.

The bill would remove provisions pertaining the initial appointment of the Securities Commissioner by the Insurance Commissioner. The bill would also remove provisions that would have required the Securities Commissioner to serve, subject to Senate confirmation, a four-year term to run concurrently with the term of the Insurance Commissioner.

[*Note:* Law enacted in 2017 consolidated the Office of the Securities Commissioner, a stand-alone agency, into the Department as a division within the Department and changed the appointment authority for the Securities Commissioner from the Governor to the Insurance Commissioner.]

Background

HB 2480, as it passed the House, would have amended a definition in the LTC Insurance Act, within the Insurance Code. The Senate Committee on Financial Institutions and Insurance (Senate Committee) recommended a substitute bill retaining the underlying bill pertaining to LTC policies and incorporating language from five Senate bills: SB 289, as introduced (RBC instructions); SB 290, as introduced (appointment of the Securities Commissioner); SB 292, as introduced (excess lines, assessment of penalty); SB 304, as introduced (reciprocal companies' conversion); and SB 402, as amended by Senate Committee (agent licensing, suspension, and revocation; other requirements of licensure; licensure of public adjusters). The Senate Committee made no amendments to the inserted language and recommended the substitute bill be passed.

HB 2480 (LTC Insurance Act Amendments)

HB 2480 was introduced by the House Committee on Insurance (House Committee) at the request of the Department. In the House Committee hearing, a representative of the Department testified in favor of the bill. The representative stated currently the Department can regulate only LTC policies that provide coverage for not less than 12 months and, by allowing this change in definition, insurance companies wanting to offer shorter duration LTC policies would be able to offer such policies to Kansas consumers. In follow-up information provided to the Committee, the Department indicated most states offer these types of plans and that the bill would allow Kansas insurers to offer these shorter-term plans and also provide consumer protections, which most states currently do not provide. No neutral or opponent testimony was provided.

The House Committee recommended the bill be placed on the Consent Calendar.

A hearing scheduled in the Senate Committee for March 17, 2020, was canceled.

According to the fiscal note prepared by the Division of the Budget on HB 2480 as introduced, the Department states the bill would have no fiscal impact.

SB 289 (RBC Instructions)

SB 289 was introduced by the Senate Committee at the request of the Department.

In the Senate Committee hearing, a Department representative stated the goal of the RBC law is to ensure each Kansas domestic company has the required amount of capital needed to support its overall business operations in consideration of its size and risk profile. The representative's testimony also indicated amendments to the effective date of the instructions have been made each year since 2009. [Note: In 2009, a legislative oversight process for updating the annual RBC instructions was established. This process allows the Department to update the requirements by rules and regulations, unless one of two statutory conditions has been met.]

No neutral or opponent testimony was provided.

In the House Committee hearing, the Department representative appeared in support of the bill. No other conferees provided testimony on the bill.

The House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [Note: The Senate Committee substitute bill would not retain this amendment.]

According to the fiscal note prepared by the Division of Budget on SB 289 as introduced, the Department states enactment of the bill would have no fiscal effect.

SB 290 (Appointment and Removal of Securities Commissioner)

SB 290 was introduced by the Senate Committee at the request of the Department.

In the Senate Committee hearing, a Department representative indicated the wording of the 2017 law could be interpreted to mean that if an Insurance Commissioner served multiple terms and wanted to keep the same Securities Commissioner, that position would have to go through the confirmations process at the beginning of each term. The representative also noted the 2017 law could be interpreted to mean the Securities Commissioner is entitled to serve a full term unless this official has engaged in official misconduct. The Department indicated the bill would allow for leadership changes that do not meet the standard of official misconduct and would clarify the options the Insurance Commissioner would have in regards to the nomination, appointment, and retention of the Securities Commissioner.

The Senate Committee recommended the bill be placed on the Consent Calendar.

In the House Committee hearing, the Department representative appeared in support of the bill. No other testimony was presented.

The House Committee amended the bill to change its effective date to be upon publication in the *Kansas Register*. [Note: The Senate Committee substitute bill would not retain this amendment.]

According to the fiscal note prepared by the Division of Budget on SB 290 as introduced, the bill would have no fiscal effect.

SB 292 (Excess Lines Coverage Penalties)

SB 292 was introduced by the Senate Committee at the request of the Department.

In the Senate Committee hearing, a representative of the Department provided proponent testimony, stating the bill would provide the Commissioner flexibility to decrease the penalty if the circumstances warrant it instead of requiring the Commissioner to assess double the tax amount as a penalty. The Department representative also stated the bill is not intended to increase the penalty amount.

No neutral or opponent testimony was provided.

In the House Committee hearing, a Department representative testified in favor of the bill. No other testimony was provided.

The House Committee amended the bill to change its effective date to publication in the *Kansas Register*. [Note: The Senate Committee substitute bill would not retain this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 292 as introduced, the Department indicates enactment of the bill could decrease the funds collected; however, the amount of penalty reduction cannot be estimated. Any fiscal effect associated with enactment of SB 292 is not reflected in *The FY 2021 Governor's Budget Request*.

SB 304 (Conversion of Reciprocal)

SB 304 was introduced by the Senate Committee at the request of the Kansas Association of Property & Casualty Insurance Companies (KAPCIC).

In the Senate Committee hearing, representatives of the Armed Forces Insurance Exchange and Graffin Financial Group appeared as proponents, stating the bill would “level the playing field,” should one of the current three Kansas reciprocals opt to convert to a mutual insurance company. The representative of the Armed Forces Insurance Exchange noted the advantages of the reciprocal structure and a significant limitation: severe restrictions on the ability to raise capital without giving governance or control of the company. The bill would provide financial flexibility to address longer-term concerns. The KAPCIC submitted written-only proponent testimony.

No neutral or opponent testimony was provided.

The Senate Committee recommended the bill be placed on the Consent Calendar.

The House Committee held a hearing on the bill and recommended the bill be passed favorably.

According to the fiscal note prepared by the Division of Budget on SB 304, the Department states enactment of the bill would have no fiscal effect.

SB 402 (Agent and Public Adjuster Licensure)

SB 402 was introduced by the Senate Committee at the request of the Department. In the Senate Committee hearing, representatives of the Department and Advisor’s Excel, LLC, provided proponent testimony. The Department representative noted Kansas is the only state requiring companies appointing agencies to appoint every agent of the agency instead of only the agents conducting the business. The bill would change the appointments process to give companies flexibility in agents they appoint and it would also streamline the agent renewal process. Written-only proponent testimony was provided by the Kansas Association of Professional Insurance Agents (PIA), National Association of

Insurance and Financial Advisors of Kansas (NAIFA-Ks), and State Farm Insurance Companies.

Neutral testimony was provided by a representative of the Kansas Association of Insurance Agents (KAIA), indicating the provision of the bill increasing the number of CEC hours from 12 to 24 hours (for agents not licensed in both P&C and L&H) would have the most significant impact on insurance agents. No opponent testimony was provided.

The Senate Committee amended the bill to:

- Delay the effective date for the new biennial renewal application fee;
- Restate current law for P&C and L&H biennial continuing education requirements and specify new provisions relating to CECs are effective January 1, 2022;
- Remove a CEC requirement for insurance agency management credits (3 hours under current law, 6 hours in the bill as introduced);
- Clarify the provisions relating to qualifications for limited lines of insurance would be exempted from the new CEC requirements associated with agents holding P&C or L&H qualifications, or both, and add self-service storage unit and travel insurance to exempted provisions; and
- Delay the effective date for provisions pertaining to appointments of agents.

In the House Committee hearing, a representative of the Department provided proponent testimony. Written-only proponent testimony was submitted by representatives of NAIFA-Ks and PIA.

Neutral testimony was provided by a representative of the KAIA.

A former state representative who serves as a licensed insurance agent appeared as an opponent to the bill, specifically citing his opposition to section 2 of the bill (increased CECs for certain insurance agents) and noted a new renewal application fee created by the bill. The conferee also submitted written-only testimony from a licensed agent/broker.

[*Note:* The House Committee did not take action on the bill prior to the Legislature's adjournment on March 19.]

According to the fiscal note prepared by the Division of Budget on SB 402 as introduced, the Department states enactment of the bill would reduce revenues to its Insurance Department Service Regulation Fund (Fund). Because the bill would remove the affiliated agent requirement, the Department indicates insurance companies would no longer retain 45.0 percent of their agents. Under current law, the Department estimates 40,833 agents would pay a \$2.00 renewal fee in FY 2021, for a total of \$81,666. For nonresident agents, an estimated 2,107,982 individuals would pay a renewal fee of \$5.00 in FY 2021, for a total of \$10,539,910. Given the Department's estimated decrease in retained agents, resident revenue would be reduced by \$36,750 and the nonresident revenue would be \$4,742,960. The total estimated revenue decrease into the Fund would be estimated at \$4,779,710. The Department notes it would receive additional revenues, however, into the Fund because the bill would add a \$4.00 biennial renewal application fee for resident agents and business entities. For FY 2021, the Department estimates half of the 23,190 resident agents and 3,096 agencies would renew. As a result, the Department would receive an additional \$52,572 (11,595 resident agents + 1,548 agencies X \$4.00 renewal fee) in Fund revenues.

In addition, because of the aggregate changes in the bill, the Department would need to make computer

programming changes for two of its systems at a cost of \$295,000 that would be paid from the Fund.

The Kansas Bureau of Investigation would experience additional fees from fingerprint fees. However, the fiscal note indicates any additional funds received would be offset by associated expenditures for processing the fingerprints.

The Division of the Budget also notes a fiscal response had been requested from the Department of Revenue as the bill eliminates the affiliated agent requirement, which would affect the retaliatory statement of the insurance premium tax filing. However, a response had not been received as of the date the fiscal note was published. Any fiscal effect associated with SB 402 is not reflected in *The FY 2021 Governor's Budget Report*.