

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 37

As Amended by Senate Committee of the Whole

Brief*

SB 37, as amended, would amend provisions governing agent licensing and renewal licensure requirements in the Uniform Agents Licensing Act and in the Public Adjusters Licensing Act and would also amend a statute governing the examination of applicants for agent licensure. The bill would also provide for an exemption and extension in complying with the continuing education requirements of licensed insurance agents serving on active duty in the National Guard or armed services of the United States for a specified period of time. The bill would further require certification by pre-need-only insurance agents that no other insurance business was transacted.

Examination for Applicant Agent Licensure (Section 1)

The bill would modify the requirement of examination for applicants and prospective applicants for an agent's license to remove a sixth-month waiting period for the retaking of an examination after a third or subsequent failure.

Uniform Insurance Agents Licensing Act (Sections 2-7)

Definitions (Section 2)

The bill would modify the definition of "biennial due date" as the term applies to both agents (the last day of the agent's

*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>

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 3)*

Biennial renewal fee. 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 of Insurance (Commissioner) and, on and after January 1, 2022, to pay a \$4.00 biennial renewal application fee.

Continuing education credits. Under current law, licensed agents holding only a property and casualty (P&C) or a 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 would be required to obtain a minimum of 24 CECs biennially.

On and after January 1, 2022, the bill would amend the CEC requirement for agents to require each licensed agent to earn 18 CECs biennially and permit at least 3 hours of instruction in ethics and remove the required insurance agency management hours.

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.

Pre-need agent reporting requirement. The bill would require that, at the biennial due date, a licensed insurance agent, who is an individual and holds a life insurance license only for the purpose of selling pre-need funeral insurance or

annuity products, provide certification from an officer of each insurance company that has appointed such agent that the agent transacted no other business during the period covered by the report. Under current law, the certification is only required upon request of the Commissioner.

Exemption and extension for licensed agents in active duty armed services. The bill would exempt a licensed agent who is a member of the National Guard or any reserve component of the armed services of the United States who serves on active duty for at least 90 consecutive days from continuing education requirements during the time such insurance agent is on active duty. The bill would require the Commissioner to grant an extension to any such licensed agent until the biennial due date that occurs in the year next succeeding the year in which such active duty ceases.

Appointment of Agents; Notification (Section 4, Section 6)

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 Kansas Insurance Department (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, 2022, also remove a required annual certification and related certification fee for a licensed insurance agent who is an officer, director, partner, or employee 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 calendar 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 (details are specified in the bill; minor traffic violations could be omitted);
- Each change in name (if the change is effected by court order, a copy of such order must 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 5)

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 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. A licensee whose license was revoked could not reapply until after two years from the date of the order.

Renewal Application—Penalties (Section 7)

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 8-9)

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 fingerprints shall 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 (KBI) 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 18 hours, the biennial minimum continuing education courses for 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.

The bill would also make technical changes.

Background

The bill was introduced by the Senate Committee on Insurance at the request of the Kansas Insurance Department (Department). On January 29, 2021, the bill was withdrawn from the Senate Committee on Insurance and referred to the Senate Committee on Financial Institutions and Insurance.

[*Note:* The bill retains provisions pertaining to producer licensing requirements and company appointment of agents previously considered in 2020 SB 402. Modifications are made to the continuing education requirements and language is added regarding examinations of applicants for agent licensure. A companion bill, HB 2074, has been introduced in the House.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony stating the bill would change the process for appointment of agents to give companies greater flexibility on the number of agents appointed and provide savings to those companies and would also streamline the agent renewal process.

A representative of the IMA Financial Group stated the bill would clarify the Department's regulatory authority over the insurance industry and would streamline the license renewal process by allowing agents to use the National Insurance Producer Registry to renew their Kansas licenses. The IMA Financial Group representative also stated the bill would remove the automatic company appointments of all licensed staff when an agency is appointed to represent a company, a process required only in Kansas, and would require only individual agents to be appointed, thereby removing burdensome reporting requirements for agencies when staff changes occur.

A representative of the Kansas Association of Insurance Agents (KAIA) indicated the bill was part of work with the Department and industry stakeholders to address agent licensing issues and craft a balanced solution. The KAIA representative stated the portion of the bill that will have the most significant impact on insurance agents pertains to the amount of continuing education hours an agent must take in order to maintain licensure. Representatives of Advisor's Excel and the IMA Financial Group also provided **proponent** testimony. Written-only **proponent** testimony was provided by representatives of the Kansas Association of Professional Insurance Agents, the National Association of Insurance and Financial Advisers of Kansas, and the State Farm Insurance Companies.

No other testimony was provided.

The Senate Committee amended the bill to change the time a licensee whose license was revoked is prohibited from reapplying for a license from five years to two years. The Senate Committee also removed language allowing for the Commissioner's discretion to prescribe the waiting time for reapplication for a licensee whose license has been denied or revoked.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to:

- Exempt a licensed agent who is a member of the National Guard or any reserve component of the armed services of the United States who serves on active duty for at least 90 consecutive days from continuing education requirements during the time on active duty and
 - Grant an extension to such licensed insurance agents for completion of continuing education; and
- Require a pre-need-only agent to provide certification at the time of filing a report at the biennial due date that no other other insurance business was conducted during the period covered by the report.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Department indicates enactment of the bill would reduce revenues into the Insurance Department Service Regulation Fund. Given that the bill would remove the affiliated agent requirement, the Department believes that insurance companies would no longer retain 49.5 percent of its company-appointed agents.

Under current law, the agency estimates 40,833 agents are expected to pay a \$2.00 renewal fee in FY 2022, for total revenue of \$81,666. For nonresident agents, an estimated 2,107,982 individuals are expected to pay a renewal fee of \$5.00 in FY 2022, for total revenue of \$10,539,910. Given the anticipated decrease in retained agents for FY 2022, the resident revenue would be reduced by \$40,425 ($\$81,666 \times 0.495$) and the nonresident revenue reduction would be \$5,217,255 ($\$10,539,910 \times 0.495$). Therefore, the total estimated revenue loss would be \$5,257,680 ($\$40,425 + \$5,217,255$).

Under the provisions of the bill, the Department would receive additional revenue into its Insurance Department Service Regulation Fund from the new \$4.00 biennial renewal application fee for individual resident agents and business entities. For FY 2022, the agency estimates that half the 23,190 (or 11,595) resident agents and 3,096 (or 1,548) agencies would renew. As a result, the agency would receive an additional \$26,286 (11,595 resident agents + 1,548 agencies x \$4 renewal fee/2 fee collected biennially = \$26,286) in fee 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 from the Insurance Department Service Regulation Fund.

The KBI has additional expenditures for processing the fingerprint checks; however, those expenditures would be offset by the required fees. The Department of Revenue states that the bill would have no fiscal effect on agency operations or State General Fund revenue.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Insurance; fees; appointment of agents; Uniform Insurance Agents Licensing Act; Public Adjusters Licensing Act; National Guard; armed services; continuing education exemption