

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2485

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

HB 2485, as amended, would amend a definition and a requirement associated with fraudulent insurance acts, add applicants for licensure to engage in the business of insurance to the list of individuals who must disclose information about prior expungements, amend the definitions and continuing education requirements for certain lines of insurance, and establish fingerprinting and national criminal history record check requirements on applicants for resident insurance agent licenses and resident public adjuster licenses.

Fraudulent Insurance Act; Anti-Fraud Plans (Section 1)

The bill would update the definition of “fraudulent insurance act” to include statements made in an electronic or recorded manner (current law only includes written statements) that are part of an application for issuance or rating of an insurance policy or a claim for payment or other benefit.

The bill also would delete the requirement that insurance companies maintain anti-fraud initiatives and, instead, require insurance companies admitted to do business in Kansas to submit an anti-fraud plan that is reasonably calculated to detect fraudulent insurance acts. The plan must be submitted to the Insurance Commissioner by January 1, 2014, or six months after the insurer has been admitted.

*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>

Expungements; Reconciliation of Statutes (Sections 2-4)

The bill would amend statutory disclosure requirements for arrests, convictions, or diversions that have been expunged by the court to individuals applying for a license to engage in the business of insurance. The bill would add these individuals to the list of persons who must disclose information about prior expungements, if asked, on an application for a license to engage in the business of insurance. The bill also makes a number of technical reconciling amendments to statutes with expungement provisions in the Criminal Code (KSA 21-6614) and Code for Criminal Procedure (KSA 22-2410) amended by the 2011 Legislature. (The reconciling amendments are printed as italicized text.)

Limited Lines; Continuing Education Requirements and Exemptions (Section 5)

The bill would add the following new definitions of limited lines insurance:

- Crop insurance—limited line insurance for damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or any other peril subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance;
- Title insurance—limited line insurance that insures titles to property against loss by reason of defective titles or encumbrances;
- Travel insurance—limited line insurance for personal risks incidental to planned travel (includes interruption or cancellation of trip or event and loss of baggage or personal effects);
- Pre-need funeral insurance—limited line insurance that allows for the purchase of a life insurance or

annuity contract by or on behalf of the insured solely to fund a pre-need contract or arrangement with a funeral home for specific services; and

- Bail bond insurance—limited line insurance that provides surety for a monetary guarantee that an individual released from jail will be present in court at an appointed time.

The bill would provide that the insurance ethics biennial continuing education requirement (at least one hour of instruction) for licensed insurance agents who are qualified to write business in either property or casualty (or both) or personal lines, or life, accident, and health, or variable contracts also could include regulatory compliance.

The bill would require insurance agents who hold a life insurance license solely for the purpose of selling pre-need funeral insurance or annuity products to file a report on or before their biennial due date affirming that the agent has transacted no other insurance business during the period covered by the report. Upon the Commissioner's request, an agent would be required to provide certification from an officer of each insurance company (which has appointed the agent) that the agent transacted no other insurance business during the reporting period.

The bill also would provide exemptions from the biennial continuing education credits (CEC's) requirements for licensed insurance agents who sell only pre-need funeral insurance and for agents who only hold a bail bond qualification.

Fingerprinting and Criminal History Record Checks (Sections 6-7)

The bill would authorize, on and after January 1, 2013, the Insurance Commissioner to require applicants for a resident insurance agent license or a resident public adjuster license to be fingerprinted and to submit to a state and

national criminal history record check. The Commissioner would be authorized to submit the applicant's fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) for a state and national criminal history record check. The Commissioner would be permitted to use the information obtained from the fingerprinting and the criminal history for purposes of verifying the identification of the person and making the official determination of the qualifications and fitness of the person to be issued a license. The bill also makes technical amendments to existing law.

The bill would provide that the procedure for collecting fingerprints must be established by the Commissioner and also must comply with the requirements of the FBI. The Commissioner, and any contractor or other designee, would be required to treat and maintain an applicant's fingerprints and any criminal history record information as confidential. The Commissioner also would be required to apply security measures consistent with the FBI's Criminal Justice Information Services Division's (CJIS) standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the authorized purposes outlined in the bill.

The Commissioner would be permitted to fix a non-refundable fee in an amount equal to the costs of fingerprinting and the criminal history record check and establish procedures for the payment of fees. Payment of the additional fee associated with the fingerprinting and criminal history record checks would be required prior to the approval of the person's application.

The fingerprinting and criminal history check provisions for resident insurance agent licensure applicants would not apply to any person applying for renewal, continuation, or adding additional lines of authority to an existing home state insurance agent or a non-resident insurance agent license. The fingerprinting and criminal history provisions for a resident public adjuster licensure applicant would not apply to

any persons applying for renewal or continuation to an existing resident public adjust or non-resident public adjuster license.

Background

HB 2485 was introduced at the request of the Kansas Insurance Department whose representative indicated the update of the definition of “fraudulent insurance act” is necessary because many transactions in the insurance industry are done by recording and electronically. Claims can be reported to insurance carriers *via* voicemail or through a webpage link, and some companies now accept applications for coverage completed online and by e-mail; this definition change allows these types of communications to be included in the prosecution of insurance fraud. The use of anti-fraud plans, the representative stated, provides clarity to company anti-fraud prevention efforts; the use of “fraud initiatives” had raised questions about what information would be required to be submitted to the Department. The representative noted that the basic purpose of the fraud warnings is to give notice to applicants and claimants as to the consequences of insurance fraud in an effort to deter insurance fraud, and 28 states currently require companies to issue fraud warning of some kind. Written testimony in support of the bill was submitted by the Coalition Against Insurance Fraud; the testimony indicated the legislation will help Kansas in the fight against insurance fraud and insurance consumers would be the key beneficiaries of that effort. Prior to working the bill, the House Committee received written testimony in support of the bill from the National Insurance Crime Bureau. There were no opponents to the bill at the time of the House Committee hearing.

The House Committee on Insurance amendments deleted provisions that would have required insurance companies to provide a fraud warning statement on all insurance applications and written and electronic forms. The

Committee also amended a deadline for the filing of anti-fraud plans with the Insurance Commissioner from January 1, 2013 to January 1, 2014.

The Senate Financial Institutions and Insurance Committee amendments insert the provisions from the introduced version of HB 2519 (disclosure of expungements) and Sub. for SB 71, as amended by the Senate Committee (limited lines of insurance, fingerprinting and criminal history record checks).

HB 2519 was introduced at the request of the Kansas Insurance Department, whose representative indicated a vital component of the application process for an insurance agent license is the screening of the applicants' criminal history. The representative noted it is difficult to gauge the scope of the problem (applicant's criminal record) because the Department is unable to access expunged records. The Department representative reported there were a number of instances where the Department became aware of an expunged criminal record through internal records, but could not obtain the record from a court or law enforcement agency. Allowing access to expungements, the representative stated, is appropriate because insurance agents, like attorneys and investment advisers, acquire a seal of approval by the State of Kansas, along with the trust of its citizens, when they receive a license to engage in their profession. There were no opponents to the bill at the time of the House Committee hearing.

The House Insurance Committee amendments inserted a provision in the Uniform Insurance Agents Licensing Act to require the Insurance Commissioner determine whether an applicant for a resident insurance agent license is either a U.S. citizen or is an alien lawfully present in the United States. The Committee amendment also prescribes the methods the Commissioner could utilize for determining a person's citizenship or immigration status.

Sub. for SB 71. The Senate Committee on Financial

Institutions and Insurance recommended the adoption of a substitute bill. The substitute bill incorporates amendments to the Insurance Code that insert new definitions of limited lines insurance and fingerprinting and criminal history record check requirements for both new resident insurance agent and new resident public adjuster applicants for licensure. The bill, as introduced, would have increased the biennial continuing education requirements for resident insurance agents to obtain a renewal of license from the current 12 hours to 24 hours. The bill also would have provided that the number of continuing education credits (CEC's) that must be obtained in the instruction of insurance ethics and legal compliance would be three credits biennially. The requirement for 24 hours of CEC's would have been effective for the license biennium that begins on January 1, 2012 (even-years' license renewals), or January 1, 2013 (odd-years).

After further consideration, the Senate Committee on Financial Institutions and Insurance amended the substitute bill, as previously recommended by the Committee, to update the definition of pre-need funeral insurance.

The bill was introduced at the request of the Kansas Association of Professional Insurance Agents (PIA) whose representative indicated at a 2011 Committee hearing, the bill would bring Kansas into compliance with the Continuing Education (CE) standard adopted by the National Association of Insurance Commissioners (NAIC). Another PIA representative testified that many agencies are increasingly operating in multiple jurisdictions, and the lack of uniformity in the licensing process is costly and time-consuming for agents. A representative of the National Association of Insurance and Financial Advisors of Kansas (NAIFA) also appeared in support of the bill. A representative of the Kansas Insurance Department appeared in support of the bill and offered amendments addressing other areas of non-compliance with the Uniform Licensing Standards: background checks and fingerprinting at the state and federal level, definitions for "core-limited" lines, and continuing education requirements for "core-limited" lines for

prearranged funerals agents and bail bondsmen.

The bill (as introduced) was opposed by Representative Virgil Peck, who described the current process for agents to obtain CE and spoke to the financial loss to the agent attending the required CE courses. A representative of the State Farm Insurance Companies spoke to concerns about agency office staff who often maintain a single line of insurance. The increase of biennial licensure requirements would have fiscal effects on the insurance agencies; the representative also asked for consideration of expanding in-house and company-sponsored continuing education classes. A representative of American Family Insurance submitted written testimony in opposition to the bill.

Following the conclusion of discussion on the bill, the Senate Committee on Financial Institutions and Insurance requested the Legislative Coordinating Council approve an interim study of the fingerprinting and criminal history record check provisions in the amendments submitted to SB 71 and another bill in the Committee (SB 64). The topic was approved and assigned to the Special Committee on Financial Institutions and Insurance. The Special Committee recommended the Senate Committee schedule time to review SB 71, including its fingerprinting amendment offered by the Kansas Insurance Department, prior to the 2012 Committee bill deadline, to allow time for consideration by the House Insurance Committee. The Senate Committee held a hearing on the bill and reviewed amendments submitted by the Kansas Insurance Department for consideration as a substitute bill. An amendment, submitted by the Kansas Association of Insurance Agents, to the insurance ethics biennial CEC requirement was included in the amendment. The Senate Committee adopted the amendments, with one exception (deleted language that would have authorized the Commissioner to require fingerprinting and criminal history record checks for new resident public adjusters applicants for licensure). After reconsideration of its action, the Committee recommended the substitute bill, including provisions applying to applicants for resident public adjuster licensure.

The fiscal note prepared by the Division of the Budget for HB 2485 states the Kansas Insurance Department indicates enactment of the bill would have no fiscal effect on the agency. Any costs associated with the warning regarding insurance fraud on written insurance claims and applications would be borne by insurance companies (the House Committee amendments delete the fraud warning notification requirement).

The fiscal note for HB 2519, as introduced, indicates the bill, if implemented, would have no fiscal effect.

The fiscal note prepared by the Division of the Budget for SB 71, as introduced, outlines programming expenses for the Kansas Insurance Department, namely for changes in the three computer systems used for agent continuing education, license administration, and renewal. A fiscal note was not available on provisions incorporated into the substitute bill.

Information provided to the Interim Special Committee by the Kansas Insurance Department estimated the fingerprinting requirement would add between 2,500 and 3,750 applicant fingerprint jobs per year for the KBI.