

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2143**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Senate Sub. for HB 2143 would amend several health insurance provisions in the Insurance Code related to the regulation of association health plans (AHPs) and small employer plans. The bill would also amend the Insurance Code to add an entity to the list of those entities providing healthcare benefit coverage that are not subject to the jurisdiction of the Commissioner of Insurance (Commissioner). Finally, the bill would designate certain statutes as the Small Employer Health Insurance Availability Act (Act).

The bill would make several technical updates and grammatical changes in the statutes of the Act subject to the bill.

Effective Dates

Provisions of the bill would be in force and effective on and after April 1, 2019, and publication of the bill in the *Kansas Register*, except that provisions relating to fully-insured AHPs and membership requirements [Section 1] would become effective upon publication in the *Kansas Register*.

*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>

Group Insurance Policies—Fully-insured AHPs and Plan Membership [Section 1]

The bill would remove a membership limitation placed on AHPs that requires the association have at least 25 members, employees, or employees of members to be offered group accident and health insurance coverage.

Designation of the Small Employer Health Insurance Availability Act; Stated Purpose and Intent; Definitions [Sections 2-3]

The bill would designate KSA 40-2209b through 40-2209j and 40-2209m through 40-2209o as the Act. The bill would state the purpose and intent of the Act is to “promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre-existing condition exclusions, to provide for development of ‘basic’ and ‘standard’ health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”

The bill would modify the definition of “small employer” to remove “association” for entities eligible for group sickness and accident insurance and separately require, when determining the number of eligible employees, employees participating in an AHP be counted in the aggregate at the association level.

The bill would also create two definitions:

- “Association health plan” or “AHP” would mean a coverage for the payment of expenses described in KSA 2018 Supp. 40-2222 offered by a qualified trade, merchant, retail or professional association

or business league that complies with the provisions of KSA 2018 Supp. 40-2222a and 40-2222b; and

- “Qualified trade, merchant, retail or professional association or business league” would mean any *bona fide* trade merchant, retail or professional association or business league that:
 - Has been in existence for at least five calendar years;
 - Is composed of five or more employers; and
 - Is incorporated in Kansas, has a principal office located in Kansas, or has a principal office within a metropolitan area that has boundaries within Kansas.

***AHPs—Exemption from Regulation under the Act
[Section 4]***

The bill would exempt certain AHPs from regulation under the Act.

***Exemptions from the Commissioner’s Jurisdiction;
Computation of Premium Tax [Sections 5-7]***

Exemptions from Jurisdiction, Amendments to Law

The bill would amend provisions pertaining to authorized multiple employer welfare arrangements (MEWAs) and self-insured plans exempted from the jurisdiction of the Commissioner. The bill would amend the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust. The bill would also amend an exemption granted to any other qualified trade, merchant, retail, or professional association or business league to remove a requirement the entity be

incorporated in Kansas and instead specify such entity provides coverage for the payment of expenses described to or for the members of the association, their employees, and dependents.

Kansas Farm Bureau exemption, coverage, and requirements. The bill would exempt a nonprofit agricultural membership organization incorporated in Kansas on June 23, 1931 (the Kansas Farm Bureau [KFB]), or an affiliate thereof, that provides healthcare benefit coverage for the payment of expenses to or for the members of the organization and their dependents from the jurisdiction of the Commissioner.

The bill would specify the healthcare benefit coverage provided by the nonprofit agricultural membership organization would not be considered insurance, notwithstanding any provision of law to the contrary. The bill would permit the risk under such coverage to be reinsured by a company authorized to conduct reinsurance in Kansas.

Further, the bill would require providers of this healthcare benefit coverage to file a signed, certified actuarial statement of plan reserves annually with the Commissioner.

Definition and Requirements

The bill would remove the definition assigned to a qualified trade, merchant, retail, or professional association or business and also eliminate two requirements placed on these entities: the entity be in existence for at least five years and be composed of five or more employers. [Note: A definition for these entities and the associated requirements deleted in this section would be established in the bill under KSA 2018 Supp. 40-2209d.]

Premium Tax Computation

The bill would also amend law providing for the payment of an annual premium tax by self-insured AHPs exempted

from the jurisdiction of the Commissioner to provide a computation method for the premium tax applicable to the location of such association. [Note: Under current law, an exempted AHP is subject to a 1.0 percent annual tax on its annual Kansas gross premium and must be incorporated in Kansas.] The bill would update “association” to “person or entity” in the statute and provide, for persons or entities having a principal office within a metropolitan area that has boundaries in Kansas and persons or entities having their principal office located within the borders of Kansas and offering policies to non-residents of Kansas, the tax owed shall be based upon the gross premium collected during the preceding year relating to health benefit plans issued to members that have a principal place of business in Kansas.

Background

Senate Sub. for HB 2143, as recommended by the Senate Committee on Financial Institutions and Insurance, incorporates the provisions of SB 29, as introduced, and the modified provisions of SB 36, SB 34, and SB 30 (these bills relate to the regulation of AHPs) and SB 32, as amended by the Senate Committee (relating to regulation of the exemption of a non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner).

The Senate Committee did not adopt the language contained in SB 33 (specifying the conditions under which a small employer carrier may establish certain classes of business) and SB 31 (exempting certain AHPs from requirements pertaining to small employer health plans) pertaining to the regulation of AHPs, so current law would be retained on these topics. [Note: Senate Sub. for HB 2143 is nearly identical to HB 2054, as amended by the House Committee on Insurance, with one exception (SB 32 amendments). Amendments to KSA 2018 Supp. 40-2222a and 40-2222b reflect the inclusion of a non-insurance health care benefits coverage and generally use “person or entity” instead of “association.”]

The original contents of HB 2143 (pertaining to risk-based capital instructions) were inserted into HB 2177, as amended by the Senate Committee.

Package of AHP Bills (Senate Bills 29-31; 33-34; 36)

On October 12, 2017, the President issued Executive Order (EO) 13813 (“Promoting Healthcare Choice and Competition Across the United States”), which, among other things, encourages expanded access to AHPs. The EO required, within 60 days of its issuance, the Secretary of Labor to consider the proposal of regulations or revised guidance to expand access to health coverage by “allowing more employers to form AHPs” (the EO encouraged promotion of AHP formation on the basis of common geography or industry).

The Final Rule, issued by the U.S. Department of Labor and published on June 21, 2018, allows employers to form AHPs (termed “small business health plans”) on the basis of geography or industry (*i.e.*, the plan could serve employees in a city, county, state, or multi-state metro area, or certain businesses in a selected trade or industry nationwide) and allow sole proprietors to join these plans. Among the Rule’s provisions, AHPs may not charge higher premiums or deny coverage to people because of pre-existing conditions, or cancel coverage because an employee becomes ill. [*Note:* The Final Rule does not affect AHPs in place prior to its issuance.] Although the Final Rule became effective on August 20, 2018, rollout dates vary for plans, with fully-insured plans permitted to offer coverage beginning September 1, 2018.

Six bills (Senate Bills 29-31, 33-34, 36) related to AHPs were introduced by the Senate Committee on Financial Institutions and Insurance. Prior to the hearings on these six bills in the Senate Committee, an Assistant Revisor of the Office of Revisor of Statutes provided an explanation of the federal Final Rule and requirements for states’ conformity.

Background information on SB 29, 30, 34, 36, and 32 is provided below.

SB 29 (Providing for Fully-insured AHPs)

In the Senate Committee hearing, representatives of Blue Cross and Blue Shield of Kansas, Inc. (BCBSKS), the Kansas Chamber of Commerce, and Opportunity Solutions Project provided proponent testimony, generally stating the bill would align Kansas' small group health insurance laws with the new federal Final Rule. The representatives noted AHPs cannot deny employer groups or their employees coverage based upon their pre-existing health conditions and cannot inflate rates on one person or a single small business based on pre-existing health conditions. Written-only proponent testimony was provided by representatives of the Kansas Dental Association (KDA), the Greater Topeka Chamber of Commerce, the Kansas Restaurant and Hospitality Association (KRHA), and a representative of White Exploration, Inc. on behalf of the Kansas Independent Oil and Gas Association (KIOGA).

A representative of the American Cancer Society Action Network (ACS CAN) provided written-only opponent testimony, noting legislation to expand AHPs could segment the insurance market, increase premiums, and make it more difficult for cancer patients and cancer survivors to obtain health insurance.

The Senate Committee recommended a substitute bill (Senate Sub. for HB 2143) that contains the provisions of SB 29, as introduced.

SB 30 (Updating Definitions Related to Small Employer Health Plans and AHPs)

In the Senate Committee hearing, representatives of BCBSKS, the Greater Topeka Chamber of Commerce,

Opportunity Solutions Project, and Wichita Regional Chamber of Commerce provided written-only proponent testimony.

A representative of ACS CAN provided written-only opponent testimony.

The Senate Committee modified the language of SB 30 and inserted the modified language into Senate Sub. for HB 2143 to update the definition of “small employer” to specify the employees participating in an AHP shall be counted in the aggregate and clarifying the determination of the number of eligible employees, include and update a definition of “association health plan” or “AHP,” and include a definition of “qualified trade, merchant, retail or professional association or business league” in KSA 2018 Supp. 40-2209d.

SB 34 (Exempting Health Plans Issued to Associations of Small Employers from Certain Statutory Provisions Governing Small Employer Health Plans)

In the Senate Committee hearing, representatives of the Greater Topeka Chamber of Commerce and Opportunity Solutions Project provided written-only proponent testimony.

A representative of ACS CAN provided written-only opponent testimony.

The Senate Committee modified the language of SB 34 and inserted the modified language into Senate Sub. for HB 2143 to remove a provision in KSA 40-2209e related to health care benefits covering employees of a small employer specific to aggregation and the number of employees. [*Note:* This language is clarified in the amendment to the definition of “small employer” in KSA 2018 Supp. 40-2209d, contained in SB 30. SB 34, as introduced, would have removed only a portion of this language relating to a policy issued to an association of small employers.]

SB 36 (Making Certain Self-funded AHPs Subject to the Jurisdiction of the Commissioner)

In the Senate Committee hearing, representatives of the Greater Topeka Chamber of Commerce, KDA, KRHA, Opportunity Solutions Project, and the Wichita Regional Chamber of Commerce provided written-only proponent testimony. The KDA representative requested an amendment to delete reference to a “trust established November 1, 1985,” related to the self-funded Voluntary Employee Benefit Association, which is no longer in existence. [Note: In the substitute bill, the Senate Committee amended the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust.]

A representative of LeadingAge Kansas provided opponent testimony, expressing concern the bill would inadvertently outlaw the self-funded MEWA plan by LeadingAge Kansas. A representative of ACS CAN provided written-only opponent testimony.

The Senate Committee modified the language of SB 36 and inserted the modified language into Senate Sub. for HB 2143 to amend the exemption previously authorized for a professional association of dentists, remove a specified date and instead provide for the association through an established trust; update language related to “a qualified trade, merchant, retail, or professional association or business league” to remove the requirement that the entity be incorporated in Kansas, specify coverage for the payment of expenses for members of the association, their employees, and dependents, and amend the definition of the term to incorporate the definition contained in KSA 2018 Supp. 40-2209d; and provide a computation method for the premium tax applicable to the location of an entity or person.

SB 32 (Exempting Certain Non-insurance Healthcare Benefits from the Commissioner's Jurisdiction)

SB 32 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the KFB.

In the Senate Committee hearing, representatives of the KFB and the Kansas Corn Growers Association and three Kansas farmers spoke in favor of the bill. The proponents generally stated the bill would offer more affordable healthcare options to members of the KFB. Written-only proponent testimony was provided by a representative of the Wichita Regional Chamber of Commerce.

Representatives of BCBSKS, Medica, and the National Multiple Sclerosis Society testified in opposition to the bill. The opponents generally stated the bill would exempt the KFB from federal and state requirements, specifically citing coverage for pre-existing medical conditions and other protections under the law, including guaranteed issue; prompt payment of claims; and health insurance benefit and provider mandates, including essential health benefits. Written-only opponent testimony was provided by representatives of the ACS CAN and the Leukemia & Lymphoma Society.

Neutral testimony was provided by a representative of the Kansas Insurance Department (Department), who provided information on self-funded association health plans (AHPs). [*Note: Under current law, all entities exempted from the Commissioner's jurisdiction in KSA 2018 Supp. 40-2222 are self-funded AHPs who generally offer benefits coverage through a self-insured plan.*] Written-only neutral testimony was provided by a representative of the Kansas Association of Insurance Agents.

The Senate Committee amended the bill to specify the healthcare benefit coverage described in the bill would not be considered insurance; permit reinsurance for such coverage; and require the submission of a signed, certified actuarial statement of plan reserves annually with the Commissioner.

The Senate Committee amendment modifies an amendment submitted by the KFB during the Senate Committee hearing.

The Senate Committee included provisions of SB 32, as amended by the Senate Committee, in Senate Sub. for HB 2143.

Fiscal Information for Senate Sub. for HB 2143

SB 29, SB 30, SB 34

According to the fiscal notes prepared by the Division of the Budget on SB 29, SB 30, and SB 34, as introduced, enactment of these bills would have no fiscal effect.

SB 36

The Department indicates enactment of SB 36, as introduced, may result in entities converting fully-insured health plans to new AHPs. This likely would result in a decline in premium tax collections because the carriers of fully-insured plans pay a premium tax of 2.0 percent or 5.77 percent, whereas the carriers of AHPs pay a 1.0 percent premium tax. However, the fiscal effect cannot be estimated as the number of entities that would convert fully-insured health plans to AHPs is unknown. Any fiscal effect associated with enactment of SB 36, as introduced, is not reflected in *The FY 2020 Governor's Budget Report*.

SB 32

The Department indicates enactment of SB 32, as introduced, could result in a decrease in premium taxes collected by the State (insurance premium tax revenue) if individuals switch from a fully-insured plan to a self-funded plan offered by the KFB because carriers of fully-insured plans pay a 2.0 percent premium tax (accident and health insurance companies) or a 5.77 percent privilege fee (Health

Maintenance Organizations) and carriers of self-insured plans pay a 1.0 percent premium tax. The Department indicates enactment of the bill could result in a net increase in premium taxes collected by the State if enrollment in the health insurance plan includes mostly individuals who were previously uninsured. However, the fiscal effect cannot be estimated as the type of plan that KFB intends to offer and the individuals that would comprise the membership of the plan are unknown. Any fiscal effect associated with enactment of SB 32, as introduced, is not reflected in *The FY 2020 Governor's Budget Report*.