

SESSION OF 2007

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 271**

As Agreed to April 3, 2007

Brief*

SB 271 would amend a statute governing the filing of certain forms with the Insurance Commissioner. Additionally, the bill would amend an examination reporting requirement. The bill also would amend the penalty provision for certain fraudulent insurance acts. Finally, the bill would enact the Kansas Long-Term Care Insurance Prompt Payment Act and would amend the Kansas Health Care Prompt Payment Act to include dental claims.

Certificate Filing Requirements

The bill would amend a statute governing the filing of certain forms with the Insurance Commissioner to require that certificate of insurance forms be filed with and approved by the Commissioner prior to use. The certificate would be required to contain specific language similar to the following: "The certificate of insurance neither affirmatively or negatively amends, extends or alters the coverage afforded by the policies listed thereon." The bill also would provide that an industry standard setting organization may be authorized by the Insurance Commissioner to file these certificates on behalf of authorized insurers.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Examination Reporting Requirement

The bill would amend existing law that currently requires the submission of an examination report of an insurance company, conducted by the insurance department where the company is domiciled, within three years of the date of application to the Insurance Commissioner. The amendment would provide for a five-year period for the company to submit its examination report to the Insurance Commissioner.

Fraudulent Insurance Act

The bill would amend the penalty provision for certain fraudulent insurance acts. Specifically, any combination of fraudulent insurance acts which occur in a period of six consecutive months and involve \$25,000 or more would be subject to a presumptive sentence of imprisonment, regardless of location on the sentencing grid. Under current law, a fraudulent insurance act involving \$25,000 or more is considered a severity level 6, nonperson felony and certain individuals would not be subject to a prison sentence.

Prompt Payment Acts

The bill also would enact new law by creating the Kansas Long-Term Care Insurance Prompt Payment Act, which would apply to any long-term care insurance policy issued or renewed in Kansas. Additionally, the bill would add dental claims to the Kansas Health Care Prompt Payment Act.

Provisions of the Kansas Long-Term Care Insurance Prompt Payment Act include:

- A requirement that within 30 days after receipt of any claim, any insurance company that issues a long-term care insurance policy pay a clean claim (defined as a claim having no defect or impropriety that prevents payment as a prompt payment) for reimbursement or send

a notice acknowledging receipt of and the status of the claim.

- Insurance companies failing to comply with the 30-day payment provision would be responsible for paying interest at the rate of one percent per month. The individual filing the original claim would not be required to file any additional claim for the late reimbursement.
- Persons receiving a request for additional information must submit all additional information requested by the insurance company within 30 days after receipt of the request. Failure to do so would not invalidate or reduce the claim, provided the information is provided as soon as possible (as defined in KSA 40-2203). The insurance company would be required, within 30 days of the receipt of any additional information, to pay a clean claim or send a notice stating its refusal to reimburse and specific reasons for denial.

Any violation of this act by an insurance company with flagrant and conscious disregard, or with such frequency as to constitute a general business practice, would be considered a violation of the Unfair Trade Practices Act. Additionally, the Commissioner of Insurance would be required to adopt rules and regulations necessary to carry out the provisions of the Act.

The Kansas Long-Term Care Insurance Prompt Payment Act would take effect upon publication in the statute book and be in force on and after January 1, 2008.

The bill also would remove “dental” from the exclusions for the Kansas Health Care Prompt Payment Act and would add “dental” to the listing of policies and contracts permitted under the definition of “policy of accident and sickness insurance.”

Conference Committee Action

The Conference Committee agreed to the House amendments to SB 271 and agreed to amend the bill further to include the provisions of SB 112 (examination reporting requirement), as recommended by the Senate Committee on Financial Institutions and Insurance; SB 114 (certain fraudulent insurance acts), as amended by the House Committee of the Whole; and SB 239 (prompt payment of claims), as amended by the House Committee on Insurance and Financial Institutions.

Background

SB 271 was requested by the Kansas Association of Insurance Agents whose representative indicated at the Senate Committee hearing that currently, insurers with multiple insurance company licenses in its group are allowed to file a different loss cost multiplier for each company in its group. Regional mutual insurers, the conferee noted, may only have one license but would benefit from the allowance afforded to large group insurers, by having the ability to file up to four loss cost multipliers. The bill, with the amendments proposed by the Kansas Association of Insurance Agents, was supported by the Kansas Insurance Department.

The Senate Committee on Financial Institutions and Insurance amendments clarify the filing of the certificate form to specify the large risk filing exemption and the requirements for an industry setting organization, and strike the fine established for violations. Additionally, the Senate Committee amended the bill to remove dividend plans from the new filing allowance (two plans are allowed by regulation) and to allow for file and use for the first loss cost multiplier and more oversight for the Commissioner, through approval prior to use for any additional loss cost multipliers submitted by an insurance company.

The House Committee on Insurance and Financial Institutions amendments clarify the requirement for language contained in the certificate of insurance described by the bill and remove the allowance for the filing of multiple workers compensation loss cost multipliers (up to four).

The fiscal note prepared by the Division of the Budget on the introduced version of SB 271 bill indicates that the fiscal effect and additional work associated with passage of the bill cannot be estimated. The Kansas Insurance Department does not review certificate of insurance forms because they are not contracts of insurance. The agency estimates, however, that it would initially attempt to implement this bill within its current staffing and expenditure limits.

SB 112 was requested by the Insurance Commissioner whose representative indicated that the bill would put the Kansas Insurance Department in line with the majority of states' insurance departments as most states currently do not administer examinations more often than five years. As a result, the Department often must waive the examination requirement and accept reports of examinations that have been conducted within five years, instead of three years.

The fiscal note prepared by the Division of the Budget on the introduced version of the bill indicates that passage of the bill would have no fiscal effect on the operations of the Kansas Insurance Department.

SB 114 was requested by the Insurance Commissioner whose representative indicated that the bill is intended to decrease the frequency of insurance fraud by increasing the penalty associated with the highest dollar amount of fraud. The bill would put Kansas on par with insurance fraud standards in other states and also would synchronize the Kansas statute with the penalties currently employed by the Kansas Securities Commissioner in prosecuting for the same dollar amount.

The Senate Committee on Financial Institutions and Insurance amended the bill to allow for an aggregate of acts

totaling \$25,000 in a specified time period. The penalty for the aggregated acts would be presumptive imprisonment.

The House Committee of the Whole amendment limits the fraudulent insurance acts that would be subject to a presumptive sentence of imprisonment to a combination of acts committed in a specific time frame. The penalty for a single act (involving \$25,000 or more) would be subject to the provisions of current law.

The fiscal note on the introduced version of the bill prepared by the Division of the Budget indicates that passage of the bill would not have a fiscal effect on the operations of the Insurance Department, Attorney General, or Judiciary. The Kansas Sentencing Commission estimates that passage of the bill would require one additional bed every year from FY 2008 through FY 2009.

The fiscal estimate from the Sentencing Commission indicates that the Kansas Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates and that nearly all available current capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual staff costs to operate the additional capacity would be required. If there is not a need for capacity expansion created by the bill, then additional annual costs of approximately \$2,000 per inmate for basic support would be needed. Additional expenditures for health care also could be incurred, if the increase in the inmate population required adjustments in the medical contract. Any fiscal effect resulting from the enactment of this bill is not reflected in *The FY 2008 Governor's Budget Report*.

SB 239 was requested by the Insurance Commissioner whose representative indicated that prompt pay is necessary as consumer complaints have been frequent, with certain companies consistently two to three months late with payments.

The bill was supported by America's Health Insurance Plans, the Kansas Health Care Association, and the American Council of Life Insurers.

The Senate Committee on Financial Institutions and Insurance amendment increases the time-frame for the response of the insurance company to the receipt of additional information from 15 days to 30 days. The Kansas Insurance Department, in consultation with America's Health Insurance Plans, requested the amendment.

The House Committee on Insurance and Financial Institutions recommended an amendment to the bill to include the provisions of SB 273 (as amended by the Senate Committee on Financial Institutions and Insurance).

The fiscal note prepared by the Division of the Budget on the introduced version of the bill indicates that passage of the bill would have no fiscal effect on the operations of the Kansas Insurance Department. While consumers may receive their claim reimbursements in a timely manner, the passage of this bill is unlikely to change an insurance company's determination regarding which claims should be paid and the extent to which the claims should be paid. Therefore, the note concludes, passage of the bill is unlikely to have a fiscal effect on consumers.

filing requirements; prompt pay