

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2052**

As Agreed to April 3, 2009

**Brief\***

HB 2052 would enact new law governing the regulation of public adjusters, make several amendments to Kansas insurance law, add an exemption for the disclosure of certain insurance information in the Kansas Open Records Act, and enact new law to implement continuation of coverage requirements associated with the American Recovery and Reinvestment Act of 2009 (ARRA).

**Public Adjusters Licensing Act**

The bill would enact the Public Adjusters Licensing Act, an act governing the qualifications and procedures for the licensing of public adjusters. The Act would specify the duties of and restrictions on public adjusters, which would include limiting their licensure to assisting insureds in first party claims under commercial insurance contracts.

The bill would further specify the qualifications for licensure and those parties that would not require licensure, including a person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract. The bill would require the Insurance Commissioner to license public adjusters through an application process outlined in the bill. The Commissioner, in order to determine eligibility for licensure, would require criminal history record checks on applicants who are not exempt from the pre-licensing

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examination. The criminal history record check would be conducted by the Kansas Bureau of Investigation.

Prior to issuing the license, the Commissioner would make a number of findings, including financial responsibility and the proof thereof, that the applicant has successfully passed the public adjuster examination, and that the applicant has paid an application fee of \$100. The renewal fee also would be \$100. The Commissioner would be given the authority to suspend, revoke or refuse to issue or renew the license for causes specified in the bill. Additionally, the Commissioner would be allowed to take disciplinary action, including censure and the issuance of fines for violations. Any administrative fines collected by the Commissioner would be required, by the bill, to be deposited in the State General Fund.

The bill also would specify continuing education requirements for licensees, including twelve hours of coursework (eleven hours in Property & Casualty or general continuing education and one hour of ethics) on a biennial basis. Additionally, public adjusters would be prohibited from charging, agreeing to or accepting as compensation any payment, commission, fee or other item of value equal to more than 10 percent of any insurance settlement or proceeds. The Act also would specify requirements for contracts issued by public adjusters and recordkeeping. Finally, the Insurance Commissioner would be required to promulgate rules and regulations as are necessary, by July 1, 2010, to carry out the provisions of the Act. **(New Sections 1-19)**

### **Risk-Based Capital Requirements**

Specifically, the bill would enact new law to permit the Insurance Commissioner to adopt by rules and regulations any later version of the Risk-Based Capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC). The bill would require that prior to such adoption, the Commissioner must prepare an impact statement indicating the projected impact upon domestic insurers and then notify any affected insurers of this projected impact. If the

projected impact is likely to cause the amount of a domestic insurer's total adjusted capital or its RBC report from the previous year to change by more than 2.5 percent, or would cause the insurer's control level to change upon application of the later version of the RBC instructions, then the Insurance Commissioner would not be allowed to adopt the latest version in rules and regulations until the latest version is approved by legislative action.

The bill also would amend existing law to specify the date of promulgation for "RBC instructions" to December 31, 2008 and to specify any later version as promulgated by the NAIC, as may be adopted by the Insurance Commissioner. **(Sections 20-21)**

### **Deposits and Securities, Insurance Companies**

The bill would amend a statute in the Insurance Code governing the deposits of cash, securities, real estate deeds, and other assets with the Insurance Commissioner that are to be deposited with any Kansas financial institution acceptable to the Commissioner. The bill would amend the definition of financial institution to include a federal home loan bank. The bill would make changes to a capital requirement for establishing the standards for and assessing the solvency of an institution to include a regulator under the federal Home Loan Bank Act.

The bill also would amend the laws governing property and casualty companies and life insurance companies to add federal home loan banks to those financial institutions which may be designated as the trust for securities arrangement and allow federal home loan banks to obtain a "nominee name" for an insurance company in which the securities of the company may be registered. Federal home loan banks also would be permitted to arrange for securities to be held in a clearing corporation. **(Sections 22-24)**

## **Long-Term Care Partnership Program, Exchange of Policies**

The bill would amend current law concerning the Long-Term Care Partnership Program. The bill would require issuers of qualified long-term care partnership program policies to offer to all existing policyholders of long-term care policies the option to exchange the existing long-term care coverage for coverage that is intended to qualify under the Kansas Long-Term Care Partnership Program.

The following conditions would need to be met for long-term care policies to qualify for the exchange option:

- The insurer of the existing long-term care coverage would be required to certify the type of long-term care policy and also would be required to certify that the long-term care coverage was issued by the insurer on or after February 8, 2006;
- The insurer would be required to provide the offer for exchange on a one time basis and in writing;
- The offer would be required to remain open for a minimum of 45 days from the date of mailing by the insurer;
- The offer would be required to be made on a nondiscriminatory basis without regard to the age or health status of the insured; and
- The issued policies would be considered exchanges and not replacement policies.

Additionally, if no material change in risk exists, exchanged policies would not be subject to any medical underwriting. The bill would not require an insurer to offer an exchange to an individual who is eligible for benefits within an elimination period; who is or has been in a claim status; or who would not be eligible to apply for coverage due to the policy issue age or plan design limitations under the new policy. A

policy received in an exchange would be treated as newly issued and, thus, eligible for partnership policy status. Also, for purposes of applying Medicaid rules to the Kansas Long-Term Care Partnership Program, the addition of a rider, endorsement or change in the schedule page of a policy would be treated as an exchange. **(Section 25)**

### **Life and Health Insurance Guaranty Association Act**

The bill would amend a statute in the Kansas Life and Health Insurance Guaranty Association Act to increase the maximum annuity benefit, including the net cash surrender and net cash withdrawal values, from \$100,000 to \$250,000. The bill also would allow that the Guaranty Association's limits of liability with respect to the obligations of any impaired or insolvent insurer are the limits of liability in effect under this Act on the date the association became liable for that insurer (on or after January 1, 2010).

The bill also would exclude policies and contracts providing Medicare Part C and Part D health care benefits from coverage under the Act.

The amendments to the Act will become effective on January 1, 2010.

Under current law, \$100,000 is the present allowed value of annuity benefits for which the Guaranty Association would be liable in the event of insurer insolvency. **(Section 26)**

### **Open Records Act, Exemption from Disclosure**

The bill would amend the list of provisions in the Kansas Open Records Act that are not required to be disclosed to include policy information provided by an insurance carrier pursuant to a filing requirement in KSA 44-532 (applicable to insurance carriers writing workers compensation insurance). This exemption to disclosure is not to be construed to preclude access to the records of an individual employer for the purpose

of verification of coverage or to the Department of Labor for its business purposes. **(Section 27)**

### **Continuation of Health Insurance Coverage; ARRA**

The bill would amend the state continuation of coverage law (Kansas COBRA) to incorporate certain provisions and requirements of the American Recovery and Reinvestment Act of 2009. Among the provisions of the bill, employers of eligible terminated employees would be required to provide the additional notice of the right to elect coverage under the ARRA requirements. The bill also includes premium subsidy requirements under ARRA including a requirement for premiums for the special assistance continuation of coverage be paid by eligible individuals to insurance carriers. Additionally, insurance companies would be required to pay the subsidy and will have the right to reimbursement under ARRA.

The continuation of coverage provisions would expire on January 1, 2011. **(New Section 28)**

### **Effective Dates**

The amendments to the Life and Health Insurance Guaranty Association Act will become effective on January 1, 2010. The continuation of coverage provision will become effective upon publication in the *Kansas Register*.

All other provisions will become effective on and after July 1, 2009.

### **Conference Committee Action**

The Conference Committee agreed to the Senate amendments to the bill and agreed to further amend the bill by inserting the provisions of SB 105 (Public Adjusters Licensing Act), as amended by Senate Committee on Financial Institutions and Insurance; HB 2214 (Risk-Based Capital Requirements), as recommended by House Committee on

Insurance; SB 139 (Insurance deposits and securities, Federal Home Loan Bank), as recommended by Senate Committee on Financial Institutions and Insurance; HB 2310 (Long-Term Care Partnership Program), as recommended by House Committee on Aging and Long-Term Care; Sub. for SB 89 (Open Records Act, exemption from disclosure); and HB 2390 (Continuation of Coverage Requirements, ARRA), as modified by the Conference Committee.

## **Background**

*Staff Note:* The American Recovery and Reinvestment Act of 2009 (ARRA) provides for premium reductions and additional election opportunities for health benefits under COBRA. Eligible individuals will pay 35 percent of their COBRA premiums, with the remaining 65 percent reimbursed to the health coverage provider through a tax credit. The premium reduction will apply to the periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period.

**HB 2052** was introduced at the request of the American Investors Life Insurance Company (AIL) whose representative indicated that annuities are viewed by consumers as similar to those products issued by banks. Given the current economic situation and the recent increase in insurance coverage (Federal Deposit Insurance Corporation, FDIC) from \$100,000 to \$250,000, AIL believes it is important for consumer confidence to have this increase put in place. A representative of the Kansas Insurance Department testified in support of the bill, noting its support to make state regulated annuities as attractive as they were before the FDIC rule change.

The Senate Committee on Financial Institutions and Insurance amended the bill to exclude Medicare Part C (Medicare Advantage) and Medicare Part D (Prescription drug plans) programs from coverage under the Act. The amendment

was requested by America's Health Insurance Plans whose representative testified before the Senate Committee that in recent consideration of model acts for state guaranty associations, it has been clarified that claims by providers for payment of services rendered under the Part C and D programs are not covered under state guaranty acts (exempt from state taxation or assessment). The representative indicated that Congress and the Centers for Medicare and Medicaid Services (CMS) have assured that Part C and Part D beneficiaries will continue to receive services in the event of insolvency by providing continuation of coverage.

The fiscal note prepared by the Division of the Budget on the introduced version of HB 2052 states that the Kansas Insurance Department indicates the bill could be implemented within existing staff and resources.

The fiscal notes for SBs 89, 105, 139 and HBs 2214 and 2310 are available in the associated supplemental notes.

The fiscal note for the original version of HB 2390 states that the Kansas Insurance Department indicates that the bill would modify its duties, but not require additional responsibilities. Therefore, no fiscal effect is expected. The Kansas Health Policy Authority also states that the bill would cause no administrative fiscal effect. ARRA will affect the COBRA offering of the state employee health plan, which is likely to result in increased enrollment and increased utilization of the plan. COBRA participants pay the full cost of health insurance coverage. Therefore, the bill would have no direct effect on state funds. However, depending on the actual expenditures for health care of those COBRA participants, the entire plan could experience higher costs.

Insurance Code amendments; Public Adjusters; Kansas Open Records Act; Continuation of Coverage--ARRA