

SESSION OF 2025

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2128

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

HB 2128, as amended, would establish that the Kansas Insurance Commissioner (Commissioner) would select and announce the most recent version for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners (NAIC) in the *Kansas Register* by December 1.

The bill would clarify that health organization risk-based capital includes an organization licensed as a life and health insurer that the Commissioner has determined to report mainly health lines of business.

The bill would exempt certain self-funded health plans from state regulation as health benefit plans and from the definition of a “health benefit plan” in the Patient Protection Act.

The bill would amend the Insurance Holding Company Act (Act) to adopt provisions for group capital calculations and liquidity stress testing requirements and would align the Act with NAIC accreditation standards.

The bill would make other technical amendments.

The bill would be in effect 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 <https://klrd.gov/>

Insurance Calculations (New Section 1)

The bill would require the Commissioner to select and announce the version of insurance calculations, instructions promulgated by the NAIC, or other documents that may be required by the NAIC for the next calendar year by publishing the announcement in the *Kansas Register* no later than December 1 each year.

The bill would provide that calculations and instructions include, but are not limited to, RBC instructions, RBC managed care instructions, and group capital calculation instructions.

Exemptions (Section 2)

The bill would exempt from the Kansas Insurance Code self-funded health plans established or maintained for employees by the following entities:

- The state or a subdivision of the state, a school district, or any public authority, or by a county or city government or any political subdivision, agency, or instrumentality of such entities; and
- A church or convention or association of churches that is exempt from tax under Section 501 of the Internal Revenue Code.

Definitions (Sections 3–5)

The bill would amend the following definitions:

- “Health organization” would mean a health maintenance organization; limited health service organization; dental or vision plan; hospital, medical, and dental indemnity or service corporation or other managed care organization

licensed under nonprofit dental services corporation, nonprofit medical and hospital service corporations, or health maintenance organizations and Medicare provider organizations; or is an organization that is licensed as a life and health insurer under the general provisions relating to life insurance companies and has been determined by the Commissioner to report predominantly health lines of business in accordance with a health statement test. "Health organization" would not include an organization that is licensed as either a life and health insurer or a property and casualty insurer under general provisions relating to life insurance companies and mutual life insurance companies; general provisions relating to fire insurance companies; mutual fire and tornado companies; casualty, surety, and fidelity companies; mutual insurance companies organized to provide health care provider liability insurance; and mutual hail insurance companies; or reciprocal or interinsurance contracts and is otherwise subject to either the life or property and casualty RBC requirements; and

- "RBC instructions" would mean the risk-based capital instructions promulgated by the NAIC that are in effect as announced and noticed by the Commissioner.

The bill would add the following definitions:

- "Financial analysis handbook" would mean the version of the NAIC financial analysis handbook adopted by the NAIC and in effect that has been selected and noticed by the Commissioner;
- "Group capital calculation instructions" would mean the group capital calculation instructions selected and announced by the Commissioner;

- “NAIC liquidity stress test framework” would mean the separate NAIC publication that includes the history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year, and such scope criteria, instructions, and reporting templates as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC and as selected and announced by the Commissioner; and
- “Scope criteria” would mean as detailed in the NAIC liquidity stress test framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress framework for such specified data year.

Insurance Holding Company Act Amendments (Sections 6–9)

The bill would amend the Act to adopt provisions for group capital calculations and liquidity stress testing requirements and would align the Act with NAIC accreditation standards. The bill would require the Commissioner to maintain confidentiality of the information reported.

Annual Group Capital Calculation (Section 6)

The bill would require the ultimate controlling person of every insurer that is subject to registration to concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The calculation report would be completed in accordance with the NAIC group capital calculation instructions, which may allow a controlling person who is not the ultimate controlling person

to file such report, and according to the procedures within the financial analysis handbook. The report would be filed with the lead state commissioner of the insurance holding company system as determined by the Commissioner in accordance with the procedures within the financial analysis handbook.

The bill would provide exemptions for an insurer holding company system from filing the group capital calculations if certain requirements are met.

The bill would grant a lead state commissioner discretion in determining whether to require, exempt, or extend the filing of a group capital calculation report or to accept a limited group capital calculation report under certain conditions.

Liquidity Stress Test (Section 6)

The bill would require the ultimate controlling person of every insurer subject to registration and also scoped into the NAIC liquidity stress test framework to file the results of a specific year's liquidity stress test. The filing would be made to the lead state insurance commissioner of the insurance holding company system as determined by procedures within the financial analysis handbook. The NAIC liquidity stress framework would include scope criteria applicable to a specific data year. The bill would provide for the frequency of the scope criteria review, the effective date of any changes to the NAIC liquidity stress framework, and the criteria for scoping an insurer in or out of the NAIC liquidity stress framework.

The bill would require that the performance and filing of the results of a specific year's liquidity stress test comply with the NAIC fidelity stress test framework instructions and reporting template for that year and any lead state insurance commissioner determinations, in consultation with the NAIC financial stability task force.

*Deposit or Bond Requirement for Insurer in Hazardous
Financial Condition (Section 6)*

If an insurer subject to the Act is deemed by the Commissioner to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, the bill would authorize the Commissioner to require the insurer secure and maintain either a deposit, held by the Commissioner, or a bond, as determined by the insurer at the insurer's discretion. Such bond or deposit would be for the protection of the insurer for the duration of the contract or agreement or the existence of the condition for which the Commissioner required the deposit or bond.

The bill would provide the concerns the Commissioner should consider in determining whether a deposit or bond would be required. The Commissioner would have discretion in determining the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person.

Records and Data Held by an Affiliate (Section 6)

The bill would maintain that all records and data of the insurer held by an affiliate, in whatever form maintained, are and would remain the property of the insurer, be subject to control of the insurer, be identifiable, and be segregated or readily capable of segregation at no additional cost to the insurer. The bill would provide a non-exhaustive list of the types of records and data within the possession, custody, or control of the affiliate that would remain the property of the insurer. The bill would also provide that premiums or other funds belonging to the insurer that are collected or held by an affiliate would be deemed the exclusive property of and subject to the control of the insurer.

*Examination of Financial Condition by the Commissioner
(Section 8)*

The bill would authorize the Commissioner to examine any registered insurer and the insurer's affiliate to ascertain the financial condition of such insurer, including the enterprise risk to the insurer by the ultimate controlling party or by any entity or combination of entities within the insurance holding company system or by the insurance holding company system on a consolidated basis.

Confidentiality of Data and Records (Section 9)

The bill would establish that the provisions of this section would not be subject to the legislative review of exceptions to disclosure under the Kansas Open Records Act.

The bill would require the Commissioner to maintain the confidentiality of information reported or provided to the Commissioner, including the:

- Group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group-wide supervisor; and
- Liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group-wide supervisors.

The bill would add that the written agreements the Commissioner is required to enter into with the NAIC governing the sharing and use of information pursuant to the Act would be required to:

- Exclude documents, materials, or information reported by insurance holding companies as part of the registration process;
- Prohibit the NAIC and its affiliates and subsidiaries from storing the information shared pursuant to the Act in a permanent database after the underlying analysis is completed; and
- For documents, materials, or information reported by insurance holding companies as part of the registration process, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the third-party consultant to the applicable insurers.

The bill would deem the group capital calculation and resulting group capital ratio and the liquidity stress test with its results and supporting disclosures, as regulatory tools for assessing group risks, capital adequacy, and group liquidity risks. The bill would prohibit construing such documents as a means to rank insurers or insurance holding company systems.

Unless otherwise required under the Act, the bill would provide that the following actions regarding a representation or statement of the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures of an insurer or insurer group, or of any component derived in the calculation by an insurer, broker, or other person engaged in the insurance business, could be misleading and thereby prohibited:

- Making, publishing, disseminating, circulating, placing before the public, or directly or indirectly causing such actions through any of the following means of communication:
 - A newspaper, magazine, or other publication;
 - A notice, circular, pamphlet, letter, or poster;

- Radio or television broadcast or by any electronic means of communication available to the public; or
- In any other way as an advertisement, announcement, or statement.

The bill would authorize an insurer to publish announcements in a written publication for the sole purpose of rebutting a materially false statement if the insurer is able to demonstrate to the Commissioner with substantial proof the falsity or inappropriateness of a materially false statement published in any written publication regarding the:

- Group capital calculation or resulting group capital ratio;
- Liquidity stress test result or supporting disclosures for such test; or
- Inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation, resulting group capital ratio, or liquidity test result or supporting disclosures.

*Health Benefit Plan Exemptions in the Patient Protection Act
(Section 10)*

The bill would exempt self-funded health plans established or maintained for employees by the following entities from the definition of a "health benefit plan" in the Patient Protection Act:

- The state or a subdivision of the state, a school district, or any public authority, or by a county or city government or any political subdivision, agency, or instrumentality of such entities; and
- A church or convention or association of churches that is exempt from tax under Section 501 of the Internal Revenue Code.

Statutes Repealed

In addition to the statutes that would be repealed as a result of amendments made by the bill, the bill would also repeal the following statutes in the Insurance Code:

- KSA 40-249, pertaining to the expiration of the corporate powers of an insurance company organized under Kansas law for failure to issue policies within two years from the granting of its charter; and
- KSA 40-2c29, authorizing the Commissioner to adopt by rules and regulations any later versions of the RBC instructions promulgated by the NAIC.

Background

The bill was introduced by the House Committee on Insurance at the request of a representative of the Kansas Insurance Department (Department).

House Committee on Insurance

In the House Committee hearing, **proponent** testimony was provided by a representative of the Department, who stated that the changes would assist the Department in remaining accredited by the NAIC as well as update two financial regulatory tools to better ascertain insurance company solvency.

No other testimony was provided.

The House Committee amended the bill with a technical amendment.

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Department. The representative stated that the changes would assist the Department in remaining accredited by the NAIC and update two financial regulatory tools to better ascertain insurance company solvency, group capital calculation, and liquidity stress testing.

No other testimony was provided.

The Senate Committee amended the bill to exempt certain self-funded health plans from state regulation as health benefit plans and from the definition of a “health benefit plan” in the Patient Protection Act and to change the effective date to be upon publication in the *Kansas Register*.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department indicates the bill would have no fiscal effect.

Insurance; Insurance Code of the State of Kansas; Commissioner of Insurance; risk-based capital instructions; RBC; health financial reports; National Association of Insurance Commissioners; NAIC; NAIC Holding Company System Regulatory Act; group capital calculations; liquidity stress testing; Insurance Holding Company Act; self-funded health plan exemptions; Patient Protection Act