

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 78**

As Agreed to April 4, 2019

Brief*

SB 78 would create law regarding assignment of certain rights or benefits under an insurance policy on residential real estate and protections related to housing for victims of domestic violence, sexual assault, human trafficking, or stalking, as follows.

Assignment of Rights or Benefits to a Residential Contractor under an Insurance Policy on Residential Real Estate

The bill would create law regarding a post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate (assignment). Specifically, the bill would state an assignment may authorize a residential contractor (as defined by the bill to include certain persons involved in repair or replacement of roof systems, other exterior work or cleanup, or interior or exterior repair and cleanup on residential real estate) to be named as a co-payee for the payment of benefits under a property and casualty insurance policy insuring residential real estate. Such assignment would be required to include a specified notice in capitalized, 14-point type. The residential contractor would be required to provide a copy of the assignment to the insurer of the residential real estate within three business

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days of the signing of the assignment, and the assignment would have to provide that, in addition to any other right to revoke, the named insured has the right to cancel the assignment within five business days after execution.

The bill would state an assignment shall not, under certain circumstances, impair the interest of a mortgagee or prevent or inhibit an insurer from communicating with the named insured or mortgagee. An assignment would be void if the residential contractor violates any of the provisions of the new section or is not in compliance with the requirements of the Kansas Roofing Registration Act.

The bill would direct the Commissioner of Insurance to strictly enforce statutory provisions requiring insurers to promptly provide a named insured a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Any violation of the new section would be a deceptive act or practice under the KCPA.

In addition to “assignment” and “residential contractor,” the bill would define “residential real estate” and “roof system.”

***Housing Protections for Victims of Domestic Violence,
Sexual Assault, Human Trafficking, or Stalking***

The bill would create law prohibiting certain actions being taken against a tenant, lessee, or applicant for a lease because such person is a “protected person,” defined by the bill to be a person who, during the preceding 12 months, has been, is, or is in imminent danger of becoming a victim of domestic violence, sexual assault, human trafficking, or stalking.

Specifically, an applicant could not be denied tenancy on the basis of or as a direct result of being a protected person, if the applicant otherwise qualifies for tenancy or occupancy.

A tenant or lessee could not be evicted from the premises or found to be in violation of a rental or lease agreement on the basis of or as a direct result of being a protected person, if the tenant or lessee otherwise qualifies for tenancy or occupancy.

A tenant or lessee would not be liable for rent for the period after vacating rented or leased premises if the tenant or lessee is a protected person and notifies the landlord or property owner in accordance with provisions set forth in the bill. In an action brought against a tenant or lessee under Kansas law seeking recovery of rent, the tenant or lessee would have an affirmative defense and no liability for rent for the period after vacating the premises if, by preponderance of the evidence, the court finds the tenant or lessee was a protected person on the date the tenant or lessee vacated the premises at issue and the tenant or lessee provided the required notice. The protections would not affect the tenant or lessee's liability for late or unpaid rent or other amounts owed for the period prior to vacating the premises at issue.

An applicant, tenant, or lessee would qualify for the protections of the bill if the applicant, tenant, or lessee is a protected person and provides a statement regarding the qualifying circumstances to the landlord or property owner, who could also request the applicant, tenant, or lessee provide additional documentation specified by the bill. Such documentation could include a document signed by the victim and any one of various specified licensed persons from whom the victim sought assistance, declaring under penalty of perjury the licensed person holds the opinion, in their professional judgment within their scope of practice, that the qualifying incident occurred, or a court order granting relief to the protected person relating to the alleged qualifying circumstances. The submission of false information by an

applicant, tenant, or lessee would be a basis for denial of tenancy, eviction, or violation of a rental or lease agreement.

A landlord or property owner could impose a reasonable termination fee, not to exceed one month's rent, on a tenant or lessee requesting termination pursuant to the bill before the expiration date of the lease, but only if such fee is contained in the terms of the rental or lease agreement.

The bill would provide the rights under this section shall not be waived (and a landlord or property owner shall not require a tenant or lessee to waive) in a rental or lease agreement, and a rental or lease agreement would continue for any remaining tenants or lessees upon termination of a protected person's agreement pursuant to the above provisions.

The bill would allow a court to award statutory damages of \$1,000 and reasonable attorney fees and costs in an action against a landlord or property owner for a violation of the provisions created by the bill.

The bill would provide the definitions of "domestic violence," "human trafficking," "sexual assault," and "stalking" are the same as those provided by current statutes regarding substitute mailing addresses for victims of such offenses.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 78, as amended by the House Committee on Judiciary, regarding assignment of rights and benefits under an insurance policy insuring residential real estate, with one clarifying change. The Conference Committee also amended the bill as follows:

- Remove the provisions of SB 78, as amended by the House Committee on Judiciary, amending the Kansas Consumer Protection Act (KCPA)

definitions of “supplier” and “consumer transaction” (based upon the language of HB 2162); and

- Add language modified from the contents of SB 150, as amended by the Senate Committee on Judiciary, regarding housing protections for victims of domestic violence, sexual assault, human trafficking, or stalking. Specifically, the Conference Committee modified this language to:
 - Define “protected person”;
 - Add provisions addressing liability for amounts owed prior to vacating the premises, prohibiting waiver, continuing the lease for non-protected persons, and providing statutory damages;
 - Modify the list of persons who may provide declarations for supporting documentation and the content of such documentation;
 - Modify the alternative documentation that may be provided; and
 - Ensure consistency in phrasing.

Background

As it entered conference, SB 78, as amended by the House Committee on Judiciary, contained the contents of SB 78, regarding assignment of rights under an insurance policy on residential real estate, and HB 2162, amending the KCPA definitions of “supplier” and “consumer transaction.”

The Conference Committee agreed to retain the provisions of SB 78 regarding the assignment of rights (with one clarifying change), remove the provisions taken from HB 2162 amending the KCPA definitions, and add language modified from SB 150, as amended by the Senate Committee on Judiciary, regarding housing protections.

SB 78 (Assignment of Rights under an Insurance Policy on Residential Real Estate)

SB 78 was introduced by the Senate Committee on Judiciary at the request of the Kansas Association of Property and Casualty Insurance Companies (KAPCIC). As introduced and passed by the Senate, SB 78 contained provisions regarding assignment of rights to a residential contractor under an insurance policy on residential real estate.

In the Senate Committee hearing, representatives of KAPCIC, Farm Bureau Financial Services, and the Kansas Roofing Association testified in support of the bill. Written-only testimony supporting the bill was submitted by representatives of American Family Insurance, American Property and Casualty Insurance Association, Farmers Mutual Insurance Company, Kansas Association of Insurance Agents, National Association of Mutual Insurance Companies, and State Farm Insurance Companies.

The Senate Committee amended the bill pursuant to a request from KAPCIC to add further specificity to certain phrases, adjust the required notice, and adjust the provision requiring the assignment be provided to the insurer.

The Senate Committee of the Whole amended the bill to adjust the definition of “residential real estate.”

In the House Committee on Judiciary hearing, representatives of KAPCIC, Farm Bureau Financial Services, and the Kansas Roofing Association testified in support of the bill. Written-only testimony supporting the bill was submitted by representatives of American Family Insurance, American Property and Casualty Insurance Association, Bremen Farmers Mutual Insurance Company, Farmers Mutual Insurance Company, Kansas Association of Insurance Agents, National Association of Mutual Insurance Companies, and Upland Mutual Insurance.

The House Committee amended the bill to clarify the definition of “residential contractor,” remove a requirement the statement contain specified language regarding assurances by the residential contractor, and adjust the requirement regarding the residential contractor providing a copy of the assignment to the insurer. The House Committee also amended the bill to include language based upon HB 2162, regarding the KCPA definitions of “supplier” and “consumer transaction.” [Note: The Conference Committee agreed to remove the language based upon HB 2162.]

According to the fiscal note prepared by the Division of the Budget on SB 78, as introduced, the Office of the Attorney General indicates the bill could result in additional complaints and cases being filed with its Consumer Protection Division, as well as additional civil penalties of up to \$10,000 per violation. However, the fiscal effect cannot be estimated. The Kansas Insurance Department indicates enactment of the bill would have no fiscal effect on the department.

SB 150 (Housing Protections for Victims of Domestic Violence, Sexual Assault, Human Trafficking, or Stalking)

SB 150 was introduced by Senators Sykes, Alley, Baumgardner, Berger, Bollier, Doll, Faust-Goudeau, Francisco, Givens, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kerschen, Longbine, McGinn, Miller, Olson, Pettey, Skubal, Taylor, Wagle, Ware, and Wilborn.

In the Senate Committee on Judiciary hearing, Senators Sykes and Faust-Goudeau and representatives of the Kansas Coalition Against Sexual and Domestic Violence, Keep Girls Safe Foundation, Lenexa Police Department, Metropolitan Organization to Counter Sexual Assault, Sisters of Charity of Leavenworth, The Associated Landlords of Kansas, and YWCA Northeast Kansas testified in support of the bill. Written-only proponent testimony was provided by representatives of United Community Services of Johnson

County, the Westwood Police Department, and the Wichita Family Crisis Center. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to remove administrative agency records from the listed supporting documents, specify the allowable termination fee could not exceed one month's rent, and clarify terminology in the termination fee provision. [*Note:* The Conference Committee modified some of this language, as described above.]

According to the fiscal note prepared by the Division of the Budget on SB 150, as introduced, the Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on Judicial Branch operations.

Kansas Consumer Protection Act; assignment of rights or benefits; insurance policy; residential contractor; domestic violence; sexual assault; human trafficking; stalking; housing protections

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