

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 119**

As Agreed to April 4, 2023

**Brief\***

SB 119 would clarify the definition of “insurance company,” remove the requirement of a documented written demand from an insurance company for certain unpaid premiums, add certain legal entities to the definition of “person,” make the annual update to risk-based capital (RBC) instructions, amend the requirements for demonstration of fiscal soundness to be submitted by a health maintenance organization (HMO) or a Medicare provider organization (MPO) when applying for a certificate of authority, and make other technical corrections and reconciling changes in the Insurance Code.

***Insurance Statute Reference Updates***

The bill would clarify the definition of “insurance company” and make other technical corrections and reconciling changes in the Insurance Code.

***Written Demand for Unpaid Premiums by Agent or Broker***

The bill would remove the requirement of a documented written demand from an insurance company for unpaid premiums by an agent or broker.

Under current law, the failure of an agent or broker to pay premiums owed to an insurer after written demand is made is considered *prima facie* evidence that the agent or broker has used or applied the premium for another purpose. Such failure then subjects the agent or broker to the penalties listed in KSA 40-247(b).

The bill would also remove the requirement of the written demand in establishing *prima facie* evidence.

***Addition of Certain Legal Entities to Definition of “Person”***

The bill would add “and any other legal entity under the jurisdiction of the commissioner” to the definition of “person” in statute pertaining to insurance laws and enforcement. The change

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\*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/kIRD>

would allow for entities that are currently under the jurisdiction of the Commissioner of Insurance to be more accurately reflected in statute.

### ***Annual Update of Risk-based Capital Instructions***

The bill would amend the effective date specified in the Insurance Code for the RBC instructions promulgated by the National Association of Insurance Commissioners (NAIC) for property and casualty companies and for life insurance companies. The instructions currently specified became effective on December 31, 2021. The bill would update the effective date of the RBC instructions to December 31, 2022.

### ***Demonstration of Fiscal Soundness for a Certificate of Authority to Provide Health Care***

The bill would amend law relating to the financial documentation demonstrating fiscal soundness that must be submitted by a HMO or a MPO when applying for a certificate of authority to provide health care in the state.

The bill would amend requirements pertaining to statements of fiscal soundness to:

- Require financial projections for a minimum of three years from the date of application [Note: Current law requires the projections for a minimum of three years from the anticipated date of certification and on a monthly basis from the date of certification through one year.];
- Limit the projections for each deficit year and for one year thereafter required when a HMO or MPO expects to incur a deficit to a maximum of five years;
- Eliminate the requirement for monthly statements of revenue and expense for the first year on a gross dollar and a per-member-per-month basis; and
- Change the required balance sheet for all financial projections from quarterly to yearly.

### **Conference Committee Action**

The Conference Committee agreed to insert the contents of SB 14, SB 15, SB 18, and SB 26 into SB 119. All bill versions included in the Conference Committee Report are as recommended by the Senate Committee on Financial Institutions and Insurance, which returns the effective dates of the bills to publication in the statute book.

### **Background**

SB 119 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Kansas Insurance Department (Department). SB 14, SB 15, SB 18, and SB 26 were inserted in the Conference Committee Report for SB 119.

### ***SB 119 (Insurance Statute Reference Updates)***

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Department. [Note: A companion bill, HB 2285, is in conference.]

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the bill provides for a statutory cleanup to Chapter 40 of the *Kansas Statutes Annotated* and will correct references to certain statute numbers and subsections that have either been moved or repealed over recent years. The Department representative indicated the bill would reconcile those differences and references. No other testimony was provided.

#### *House Committee on Insurance*

In the House Committee hearing, an overview of the bill was provided and **proponent** testimony submitted by the Department was made available. No other testimony was provided.

The House Committee amended the bill to change its effective date to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain the amendment.]

### ***SB 14 (Annual Update of Risk-based Capital Instructions)***

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. [Note: A companion bill, HB 2100, is in conference.]

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the goal of the RBC law is to ensure each Kansas domestic insurance company has the required amount of capital needed to support its overall business operations in consideration of its size and risk profile. The representative also noted amendments to the effective date of the instructions have been made each year since 2009. No other testimony was provided.

[Note: In 2009, a legislative oversight process for updating the annual RBC instructions was established. This process allows the Department to update the requirements by rules and regulations, unless one of the two statutory triggers has been met.]

#### *House Committee on Insurance*

In the House Committee hearing, an overview of the bill was provided and **proponent** testimony submitted by the Department was made available. No other testimony was provided.

The House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain the amendment.]

### ***SB 15 (Written Demand for Unpaid Premiums by Agent or Broker)***

SB 15 was introduced in the Senate Committee on Financial Institutions and Insurance at the request of the Department. [Note: A companion bill, HB 2097, is in conference.]

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Department, stating the written demand requirement is not always fulfilled in cases of unpaid premiums, causing evidentiary issues. The removal of the requirement for a written demand would not preclude the Department from taking administrative action against a licensee, and the agent must still be shown beyond a reasonable doubt to have used the premium for unlawful purposes. No other testimony was provided.

#### *House Committee on Insurance*

In the House Committee hearing, an overview of the bill was provided and **proponent** testimony submitted by the Department was made available. No other testimony was provided.

The House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

### ***SB 18 (Addition of Certain Legal Entities to Definition of “Person”)***

SB 18 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. [Note: A companion bill, HB 2098, is in conference.]

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Department, who explained the additional language proposed in the bill would help ensure the Commissioner of Insurance can pursue statutory penalties against entities in violation of state insurance law. No other testimony was provided.

#### *House Committee on Insurance*

In the House Committee hearing, an overview of the bill was provided and **proponent** testimony submitted by the Department was made available. No other testimony was provided.

The House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain the amendment.]

***SB 26 (Demonstration of Fiscal Soundness for a Certificate of Authority to Provide Health Care)***

SB 26 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. [Note: A companion bill, HB 2094, is in conference.]

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the bill would clarify the financial projection requirements when applying for a certificate of authority by changing from various monthly and quarterly statements to annual statements. The representative stated the change would create a more streamlined and less burdensome approach when transacting business in Kansas. No other testimony was provided.

*House Committee on Insurance*

In the House Committee hearing, an overview of the bill was provided and **proponent** testimony submitted by the Department was made available. No other testimony was provided.

The House Committee amended the bill to change its effective date to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain the amendment.]

**Fiscal Information**

***SB 119 (Insurance Statute Reference Updates)***

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

***SB 14 (Annual Update of Risk-based Capital Instructions)***

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

***SB 15 (Written Demand for Unpaid Premiums by Agent or Broker)***

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department, Department of Corrections, and Kansas Judicial Branch all state enactment of the bill would not have a fiscal effect.

***SB 18 (Addition of Certain Legal Entities to Definition of "Person")***

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department states that enactment of the bill would broaden the jurisdiction of the

Commissioner of Insurance to include entities such as utilization review organizations, pharmacy benefit managers, and self-funded workers compensation. The Department states the broadened scope of enforcement could increase operating expenditures; however, any additional expenditures could be absorbed within existing resources.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

***SB 26 (Demonstration of Fiscal Soundness for a Certificate of Authority to Provide Health Care)***

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department, League of Kansas Municipalities, and Kansas Association of Counties state enactment of the bill would have no fiscal effect.

Insurance; insurance company; Kansas Department of Insurance; health maintenance organizations; medicare provider organizations; certificates of authority; risk-based capital; NAIC; reporting; penalties; Commissioner of Insurance

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