

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 178

As Amended by House Committee on
Insurance

Brief*

SB 178 would enact new law to define service contracts. Specifically, the bill would provide that:

- the marketing, sale, offering for sale, issuance, making, proposing to make, and administration of a service contract shall not be construed to be the business of insurance and shall be exempt from the regulation of insurance, pursuant to chapter 40 of the *Kansas Statutes Annotated*;
- a service contract, which is exempt from chapter 40 of the *Kansas Statutes Annotated*, shall not contain any provision for consequential damages unless such consequential damages are caused by the failure, repair, replacement or maintenance rendered under the service contract; and
- a service contract, which is exempt from chapter 40 of the *Kansas Statutes Annotated*, shall not contain any provision, except as this bill provides, which would otherwise be covered by a contract of property or liability insurance issued in this state.

Service contract is defined in the bill as a contract or agreement for a separate or additional consideration, for any specified duration, to service, repair, replace or maintain all or any part of any structural component, appliance or utility system of any residential property, consumer good or other property; or to indemnify for service, repair, replacement or maintenance for consumer good or other property, due to a defect in materials, workmanship, normal wear and tear; or as a result of power surges or as a result of accidental damage from the

*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 <http://www.kslegislature.org>

handling or property damaged by power surges, with or without additional provision for indemnity payments when service repair or replacement is not reasonably commercially or economically feasible. A service contract also would include any nonconsumer commercial service contract. A service contract, as defined in the bill, would not include an automobile club service, as defined in KSA 40-2507 and amendments thereto.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the National Home Service Contract Association whose representative indicated that endorsing the National Association of Insurance Commissioners (NAIC) minimum standards model approach would allow Kansas to regulate a growing industry and provide for consumer protection. The bill was supported by the Kansas Insurance Department whose representative provided amendments relating to the definition of provider and the transaction of insurance by licensed insurers.

The Senate Committee amendments expand the definition of provider under this act to include persons who administer, issue, make, provide, sell, or offer to sell a contract. The definition does not include individuals simply acting as employees or agents on behalf of a registered provider. The Committee also replaced language regarding the transaction of insurance by replacing "authorized" with "licensed" insurer.

The House Committee on Insurance recommended removal of the language in the bill, as amended by the Senate Committee, and the insertion of language providing for the definition of the service contract and the exemption of service contract and its marketing, sale, offering for sale, issuance, making, proposing to make, and administration from the regulation of insurance, pursuant to chapter 40 of the *Kansas Statutes Annotated*.

The fiscal note prepared by the Division of the Budget on the original version of the bill indicates that passage of the bill would place additional registration and auditing duties on the Kansas Insurance Department. The Department states that it was uncertain as to whether the bill could be implemented within currently approved staffing and

operating expenditure levels. During the Senate Committee hearing, the Department indicated that requirements of the bill could be implemented within existing resources.