

SESSION OF 2006

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE
FOR SENATE BILL NO. 207**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 207 would amend existing law related to fraudulent insurance practices and prevention. The bill would allow for the reporting and filing of fraudulent insurance acts, certain protections for the reporting of the information, the creation of antifraud plans or other initiatives designed to detect fraud, and disclosure provisions for the plans.

Specifically, the bill would amend KSA 40-2,118 which defines fraudulent insurance acts to provide that:

- An insurer or any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed is to provide, on a form prescribed by the Insurance Commissioner, any and all information and any additional information related to such act as the Commissioner may require.

The bill also would require each insurer to have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: fraud investigators who may be insurer employees or independent contractors; or an antifraud plan submitted to the Commissioner no later than July 1, 2007. Each insurer submitting a plan is to notify the Commissioner of any material change in the plan's information within 30 days after such change occurs. The insurer is directed to then submit the amended plan to the Commissioner in writing.

The bill also would allow that the antifraud plans submitted to the Commissioner are to be confidential and would not be a public record or subject to discovery or subpoena in a civil action unless following an *in camera* review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth

*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>

in Article 4, Chapter 60 of the Kansas Statutes Annotated. The public records' privileges would expire on July 1, 2011 unless the Legislature reviews and reenacts this provision pursuant to the Kansas Open Records Act.

The bill also would amend KSA 40-2,119 to provide that in the absence of fraud, bad faith or malice, no person or insurer would be subject to civil liability for libel, slander, or any other relevant cause of action for the filing of reports or furnishing of information related to suspected fraudulent insurance acts.

Background

The House Committee of the Whole amended the bill to remove two provisions that would have amended KSA 40-2,118 relating to civil liability requirements for insurers, in the absence of actual malice, who provide information to the Insurance Commissioner regarding fraudulent insurance acts. The amendment also inserts the provisions of KSA 40-2,119 into the bill. The amendments to KSA 40-2,119 would allow for an insurer to be included in the civil liability protection for the filing or furnishing of reports or information. "Tort" also would be removed as a descriptor for a cause of action. The House Committee of the Whole also amended the bill to allowing for a court determination, following an *in camera* review, regarding the admissibility of an antifraud plan under the rules of evidence set forth in Article 4, Chapter 60 of the Kansas Statutes Annotated.

The House Committee on Insurance recommended the introduction of a substitute bill. The substitute restores the current definition of fraudulent act in KSA. 40-2,118 and the current penalty provisions for fraudulent acts. The original bill modified the definition and created new, as well as increased the associated penalties.

The substitute was presented to the Committee by the Insurance Commissioner.

The original bill was requested by the Insurance Commissioner whose representative indicated that the bill would strengthen the current anti-fraud statutes in Kansas. The bill was supported by the State Farm Insurance Companies, Inc. and the Coalition Against Insurance Fraud.

The Senate Committee on Financial Institutions and Insurance amended the bill to allow that violations in amounts less than \$1,000

would be subject to a class A nonperson misdemeanor.

The fiscal note prepared by the Division of the Budget on the introduced version of the bill indicates that passage of the bill would have little or no fiscal effect on the offender population, as estimated by the Sentencing Commission. As stated in the fiscal note, no information was made available by the Insurance Department regarding the fiscal effect on its operations.